# United States Court of Appeals for the Second Circuit



## JOINT APPENDIX

# 76-7073/74

## United States Court of Appeals

MMI LTD. and INTERCAMBIO COMERCIAL KATZ & ARSARAZ, S.A.,

Plaintiffs-Appellants,

v.

PERACO CHARTERING CORPORATION,

Defendant-Appellee.

STALCO INTERNATIONAL CORPORATION,

Plaintiff-Appellant,

v.

FINANCIAL ENTERPRISES OF THE BAHAMAS, LTD., HESNES SHIPPING, S.A. AND, PER ARN-STEIN ARNEBERG,

Defendants-Appellees.

On Appeal from the United States District Court For the Southern District of New York

### JOINT APPENDIX



CICHANOWICZ & CALLAN
Attorneys for Appellants
80 Broad Street
New York, New York 10004

Donald F. Mooney Attorney for Appellees 17 Battery Place New York, New York 10004 PAGINATION AS IN ORIGINAL COPY

#### INDEX

	Page
Docket Entries 71 Civil 3118	Al
Docket Entries 72 Civil 4926	A3
Complaint 71 Civil 3118	A4
Answer of Peraco Chartering Corporation 71 Civil 3118	A10
Answer of Financial Enterprises of Bahamas, Ltd. 71 Civil 3118	A15
Answer of Hesnes Shipping, A/S 71 Civil 3118	A19
Answer of Per Arnstein Arneberg 71 Civil 3118	A23
Report of Magistrate Raby	A26
Memorandum Decision, April 6, 1973, Lasker, D.J	A31
Amended Complaint 71 Civil 3118	A32
Complaint 72 Civil 4926	A38
Answer to Amended Complaint 71 Civil 3118	A44
Answer of Defendants 72 Civil 4926	A48
Notice of Motion 72 Civil 4926	A52
Affidavit of Donald B. Allen in Support of Motion 71 Civil 4926	A53
Enclosure - Identical to Report of Magistrate Raby printed herein at pages A26 to A30.	
Affidavit of Donald F. Mooney in Opposition to Motion 72 Civil 4926	A56
Notice of Motion for Leave to Amend 71 Civil 3118	A58

## Index

	Page
Affidavit of Donald B. Allen in Support of Motion for Leave to Amend 71 Civil 3118	A59
Exhibit AAmended Complaint in 71 Civil 3118 - Identical to Complaint 71 Civil 3118 printed herein at pages A32 to A37.	
Exhibit BComplaint in 72 Civil 4926 - Identical to Complaint 72 Civil 4926 printed herein at pages A38 to A43.	
Exhibit CProposed Amendment to Complaint in 71 Civil 3118	A63
Exhibit DProposed Amendment to Complaint in 72 Civil 4926	A64
Affidavit of Donald F. Mooney in Opposition to Motion for Leave to Amend 71 Civil 3118	A65
Exhibit ALetter Dated April 25, 1971	A71
Exhibit BSummons and Complaint in New York Supreme Court	A74
Exhibit CLetter Dated January 17, 1975	A81
Exhibit DLetter Dated January 27, 1975	A84
Reply Affidavit of Donald B. Allen in Support of Motion for Leave to Amend	A86
Exhibit 1Report of Magistrate Raby - Identical to Report of Magistrate Raby printed herein at pages A26 to A30.	
Exhibit 2Memorandum Decision, Lasker, D.J Identical to Memorandum Decision, Lasker, D.J. printed herein at page A31.	
Notice of Cross-Motion to Dismiss	A92
Defendants' Statement of Facts Pursuant to	A94

## Index

	Page
Affidavit of Per A. Arneberg in Support of Cross-Motion to Dismiss	A96
Exhibit ALetter Dated April 25, 1971 - Identical to Letter Dated April 25, 1971 annexed to Affidavit of Donald F. Mooney printed herein at pages A71 to A73.	
Exhibit BComplaint in New York Supreme Court - Identical to Complaint in New York Supreme Court annexed to Affidavit of Donald F. Mooney printed herein at pages A74 to A80.	
Plaintiffs' Statement of Facts Pursuant to General Rule 9(g)	A101
Affidavit of Donald B. Allen in Opposition to Cross-Motion to Dismiss	A103
Affidavit of Mordechai Goldberg in Opposition to Cross-Motion to Dismiss	A106
Exhibit 1Letter Dated April 25, 1971	All1
Reply Affidavit of Per A. Arneberg in Support of Cross-Motion to Dismiss	All3
Exhibit ALetter Dated April 25, 1971 - Identical to Letter Dated April 25, 1971 annexed to Affidavit of Mordechai Goldberg printed herein at pages All1 to All2.	
Exhibit BMemorandum of Agreement	All9
Reply Affidavit of Donald F. Mooney	A121
Notice of Motion to Amend Complaint	Al26
Affidavit of Donald B. Allen in Support of Motion to Amend Complaint	Al27
Affidavit of Donald F. Mooney in Opposition to Motion to Amend Complaint	A130
Exhibit APetition in New York Supreme Court, Page 1	Al35

## Index

	Page
Reply Affidavit of Donald B. Allen in Support of Motion to Amend Complaint	A136
Report of Magistrate Sol Schreiber and Recommendations	A137
Affidavit of Donald B. Allen	A150
Exhibit 1Report of Magistrate Schreiber - Identical to Report of Magistrate Sol Schreiber and Recommendations printed herein at pages Al37 to Al49.	
Exhibit 2Affidavit of Alan D. Jacobson	A157
Exhibit 3Proposed Amendment to Complaint in 71 Civil 3118 - Identical to Proposed Amendment to Complaint in 71 Civil 3118 annexed to Affidavit of Donald B. Allen printed herein at page A63.	
Exhibit 4Proposed Amendment to Complaint in 72 Civil 4296 - Identical to Proposed Amendment to Complaint in 72 Civil 4296 annexed to Affidavit of Donald B. Allen printed herein at page A64.	
Letter Dated October 1, 1975 in Reply to Affidavit of Donald B. Allen	A162
Memorandum of Lasker, D.J., Endorsed	A168

## DOCKET ENTRIES 71 CIVIL 3118

Date    Date   PROCEEDINGS	
No. 12-71 Filed formula iv. Issuer Surveys.  10. 12-71 Filed summons with marshal s ret. Served Peraco Chartering Corp. by  11. 22-71 Filed summons with marshal s ret. Served Peraco Chartering Corp. by  12. 13. Served Financial Enterpris s of Bahanas Ltd. by Er. Erikson on 7/19/71.  12. Served Financial Enterpris s of Bahanas Ltd. by Er. Erikson on 7/19/71.  12. Per Arnstein Arneberg, by Mr. Erikson on 7/19/71.  13. Mag. 10-71 Filed stipulation and corder extending deft. Finançan and Loveland, S.i.'r time to answer to 9/9/71. So oncered, Finence, J.  14. Mag. 10-71 Filed stipulation and corder extending defts. Peraco 'hartering Corp. and Per Arnstein Arneberg's time to graver to 9/9/71; also extending Acfts. Filed fotice of Appearance for Peraco Chartering Corp. and Per Arnstein Arneberg's time to graver to 9/9/71; also extending Acfts. Filed fotice of Appearance for Peraco Chartering Corp. and Per Arnstein Arneberg's time to graver to 9/9/71; also extending Acfts. Filed Interprises of Bahanas, and and Bones Shipping, A.S. to asswer or other acwes to vaccute service of rocess to 9/9/71, also extending Acfts. Filed Pitf's notice to take deposition of the deft Financial Enterprises of Bahanas Ltd.  12. 13-71 Filed pitf's' notice to take deposition of deft Hesnes Shipping A.S.  12. 13-71 Filed pitf's' notice to take deposition of deft Perac Chartering Corp.  12. 13-71 Filed pitf's' notice to take deposition of deft Perac Chartering Corp.  12. 13-71 Filed pitf's' notice to take deposition of deft Perac Chartering Corp.  12. 13-71 Filed gitf's notice to take deposition of deft Perac Chartering Corp.  12. 13-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  12. 13-72 Filed deft.'s Memorandum of Law in support of motion  12. 13-72 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  12. 13-14 Filed Help filed File	231 -
NATE  12-71 Filed formulair. Issuer Surmons. Assiliated the summons with marshal's ret. Served Peraco Chartering Corp. by  Mr. Erickson on 7/19/71.  Served Financial Enterpris s of Bahamas Ltd. by Er. Erikson on 7/19/71.  Flanigan and Loveland S.A. by Pr. Erikson on 7/19/71.  Per Armstein Armebrage by Mr. brikson on 7/19/71.  Reseas Shipping A.S. by Mr. Erikson on 7/19/71.  Mesnes Shipping A.S. by Mr. Frikson on 7/19/71.  Mesnes Shipping, A.S. by Mr. Frikson on 7/19/71.  Mr. Fried Stip and order extending defts. Prace Onthering Corp. armstein Frikson on take deposition of deft Hesnes Shipping A.S. be newher or other one of the frikson of Mr. by Mr. Britanical Enterprises of Bahamas Itd.  Mr. 13-71 Filed pitffs' notice to take deposition of deft Hesnes Shipping A.S. be 13-71 Filed pitffs' notice to take deposition of deft Perac Chartering Corp. p. 13-71 Filed pitffs' notice to take deposition of deft Perac Chartering Corp. p. 13-71 Filed pitffs' notice to take deposition of deft Perac Chartering Corp. p. 13-72 Filed pitffs' notice to take deposition of deft Perac Chartering Corp. p. 13-73 Filed pitffs' notice to take deposition of deft Perac Chartering Corp. p. 13-74 Filed Affile and Order of discontinuance without prejudice, as to deft. Flanigan, Loveland, by Mr. Mr. Mr. Mr. Mr. Mr. Mr. Mr. Mr. Mr	MIT!
Nul 12-71 Filed Complaint, Issuer Surmons, and 22-71 Filed summons with marshalls ret. Served Peraco Chartering Corp. by Mr. Erickson on 7/19/71.  Mr. Erickson on 7/19/71.  Served Financial Enterpris s of Bahamas Ltd. by Mr. Erickson on 7/19/71.  Flanigan and Loveland S.A. by Mr. Erickson on 7/19/71.  Flanigan and Loveland S.A. by Mr. Erickson on 7/19/71.  Reseas Shipping A.S. by Mr. Erickson on 7/19/71.  Masses Shipping A.S. by Mr. Erickson of Mahamas, Mr. and St. Shipping A.S. by Assessing Corp. and Per Armstein Armeburg's time to answer to 9/9/71, also extending defts. Finances in Armeburg's time to answer to 9/9/71, also extending defts. Finances and Mr. and M	Control of the Contro
Nul 12-71 Filed Complaint, Issuer Surmons, and 22-71 Filed summons with marshalls ret. Served Peraco Chartering Corp. by Mr. Erickson on 7/19/71.  Mr. Erickson on 7/19/71.  Served Financial Enterpris s of Bahamas Ltd. by Mr. Erickson on 7/19/71.  Flanigan and Loveland S.A. by Mr. Erickson on 7/19/71.  Flanigan and Loveland S.A. by Mr. Erickson on 7/19/71.  Reseas Shipping A.S. by Mr. Erickson on 7/19/71.  Masses Shipping A.S. by Mr. Erickson of Mahamas, Mr. and St. Shipping A.S. by Assessing Corp. and Per Armstein Armeburg's time to answer to 9/9/71, also extending defts. Finances in Armeburg's time to answer to 9/9/71, also extending defts. Finances and Mr. and M	Date Ord
122-71 Filed summons with marshal's ret. Served Feraco Chartering Corp. by Mr. Erickson on 7/19/71. Served financial Enterpris s of Baharas Ltd. by Kr. Erikson on 7/19/71. Fer Aristein Arneberg, by Mr. Erikson on 7/19/71. Resnes Shipping A.S. by Mr. Erikson on 7/19/71. Resnes Shipping A.S. by Mr. Erikson on 7/19/71. Resnes Shipping A.S. by Mr. Erikson on 7/19/71.  12:10-71 Filed stipulation and order extending deft. Flanigan and Moveland, S.1.'s the to answer to 9/9/71. So crosered. Flance, J.  119-71 Filed stipulation and order extending deft. Flanigan and Moveland, S.1.'s the flaties of Appearance for Firnaco Chartering Corp. and For Armstein Arneberg's time to answer to 9/9/71; also extending defts. Fine chterprises of Baharas, Ind. and Homes Shipping, A.S. to answer or ather answer to recent the flat plates of Armstein Arneberg's time to answer to 9/9/71. So ordered. httley, J.  13-71 Filed plates' notice to take deposition of the deft Financial Enterprises of Baharas Ltd.  13-73 Filed plates' notice to take deposition of deft Hesnes Shipping A.S.  13-74 Filed plates' notice to take deposition of deft Peract Chartering Corp.  13-75 Filed plates' notice to take deposition of deft Peract Chartering Corp.  13-76 Filed plates' notice to take deposition of deft Peract Chartering Corp.  13-77 Filed deft. Flanigan and Loveland, S.A. Affdyr. and notice of mot to dismiss complaint. Ret. 9-28-71  13-78 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  13-79 Filed stip and order that plates and support of motion prejudice. So Ordered; Ryan, J.  13-71 Filed stip and order that plates and signed this day. So Ordered; Ryan, J.  13-72 Filed stip and order that plates and signed this day. So Ordered; Ryan, J.  13-73 Filed stip and order that plates and signed this day. So Ordered; Ryan, J.  13-74 Filed stip and order that plates and security for costs, Mathematical and condition appears to be per received, and application appears to be per received, and applicat	Judgment
Hr. Erickson on 7/19/71.  Served financial Enterpris s of Bahamas Ltd. by Er. Erikson on 7/19/71.  Flanigan and Loweland S.A. by Pr. Erikson on 7/19/71.  Per Armstein Arneberg, by Mr. Erikson on 7/19/71.  Besses Shipping A.S. by Besses Birping A.S. by Besses Shipping A.S. by Besses Shipping A.S. by Besses Shipping A.S. by Besses of Bahamas Itd. and Hones Shipping, A.S. by Besses of Bahamas Itd. and Hones Shipping, A.S. by Besses of Bahamas Itd. and Hones Shipping A.S. by Besses Shipping B.S. by Besses Besses Besses Besses Besses Besses Besses	
Served Financial Enterpris s of Bahanas Ltd. by Nr. Frikson on 7/19/71.  Flanigan and Loweland S.A. by Nr. Frikson on 7/19/71.  Reseas Shipping A.S. by Nr. Brikson on 7/19/71.  Reseas Shipping A.S. by Nr. Brikson on 7/19/71.  Reseas Shipping A.S. by Nr. Frikson on 7/19/71.  Reseas Shipping A.S. by Nr. Brikson on 7/19/71.  Reseas Shipping A.S. by Nr. Brikson on 7/19/71.  Filed Ectice of Appearance for Frinancial Enterprises of Bahanas, Ltd. and Brenes Shipping A.S. be amatein Arneburg's time to answer to 9/9/71; also extending defts. Financial Enterprises of Bahanas Ltd. and Brenes Shipping A.S. to answer or other acceptance for Fricas Chartering Corp. and Rev. Arnetein Arneburg's time to answer to 9/9/71; also extending defts. Financial Enterprises of Bahanas Ltd.  Research Shipping A.S. by Nr. Briked platfs' notice to take deposition of deft Hermanical Enterprises of Bahanas Ltd.  Research Shipping A.S. by Nr. Briked Platfs' notice to take deposition of deft Hermanical Enterprises of Platfs' intice to take deposition of deft Perac Chartering Corp.  Research Shipping A.S. by Nr. Briked Platfs' notice to take deposition of deft Perac Chartering Corp. p. 10-71 Filed pltff's notice to take deposition of deft Perac Chartering Corp. p. 10-71 Filed deft's Memorandum of Law in support of motion p. 2.27-71 Filed deft's Memorandum of Law in support of motion prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  P. 28-71 Filed stip and order that pltf: and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  Research Shipping A.S. by Nr. Briked Arbitan for the Platfs and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  Research Shipping A.S. by Nr. Briked Arbitan for the Platfs and deft. Flanigan, Loveland, that the motion of	
Flanigan and Loweland S.A. by Pr. Erismon on 7/3/71.  Resnes Shipping A.S. by Mr. Erismon on 7/3/71.  Hesnes Shipping A.S. by Mr. Erismon on 7/3/71.  Hesnes Shipping A.S. by Mr. Erismon on 7/19/71.  Hesnes Shipping A.S. by Mr. Erismon of Bahamas, tid. and Hence Shipping A.S. by Answer or there are the move to vacute scrivice of rocess to 9/9/71. So ordered. Notley, J. 13-71.  Filed pltffs' notice to take deposition of the deft Financial Enterprises of Bahamas Lid.  13-71. Filed pltffs' notice to take deposition of deft. Hesnes Shipping A.S. by 13-71.  Hesnes Shipping A.S. by Mr. Erismon of Mr. Bernes Shipping A.S. by 13-71.  Filed pltffs' notice to take deposition of deft. Hesnes Shipping A.S. by 13-71.  Hesnes Shi	
Per Arnstein Arneberg, by Mr. Erikson on 7/19/71.  Hesnes Shipping A.S. by Mr. Erikson on 7/19/71.  12:10-71 Filed stipulation and order extending deft. Flantyan and Loveland, S.A. is the to answer to 9/9/71. So prepared, Flance, J.  17-71 Filed Stipulation and order extending deft. Flantyan and Loveland, S.A. is and Jernes Shipping, A.S.  18:17-71 Filed Stipulation and order extending defts. Peraco Universing Corp. and Per Arnstein Arneberg's time to answer to 9/9/71; also extending defts. Flant Enterprises of Bahamas Ind.  19-71 Filed stipulation and order extending defts. Peraco Universing Corp. and Per Arnstein Arneberg's time to answer to 9/9/71; also extending defts. Flant Enterprises of Bahamas Ind.  19-71 Filed pittis notice to take deposition of the deft Financed Enterprises of Bahamas Ind.  19-71 Filed pittis notice to take deposition of deft Hesnes Shipping A.S.  19-72 Filed pittis notice to take deposition of deft Per Amstein Arneberg.  19-73 Filed pittis notice to take deposition of deft Peraco Chartering Corp.  19-10-71 Filed deft. Flantigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  19-10-71 Filed deft. Flantigan and Loveland, S.A. Only. Clerk.  19-27-71 Filed stip and order that pltfi. and deft. Flantigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  19-28-71 Filed ASER of coft. Financial Enterprises of Enhance, M.A. So Ordered; Ryan, J.  19-27-71 Filed ASER of coft. Financial Enterprises of Enhance, M.A. to complaint.  19-27-71 Filed ASER of coft. Financial Enterprises of Enhance, M.A. to complaint.  19-27-72 Filed ASER of coft. Financial Enterprises of Enhance. Met. 9-29-92  19-27-73 Filed ASER of coft. Financial Enterprises of Enhance. Met. 9-29-92  19-27-74 Filed ASER of coft. Financial Enterprises of Enhance. Met. 9-29-92  19-27-75 Filed ASER of coft. Financial Enterprises of Enhance. Met. 9-29-92  19-28-76 Filed ASER of coft. Financial Enterprises of Enhance. Met. 9-29-92  19-28-77 Filed Pitt	
13:0-71 Filed stipulation and order extending deft. Flanigan and Loveland, S.1. 's the to answer to 9/9/71. So ordered. Flance, J.  17:01 Flice Scribe of epicymance for Financial Enterprises of Bahamar, Str. and Formers Shipping, A.S.  19:71-11 Filed Stipulation and order extending defts. Person Shartering Corp. and Formers Interprises of Bahamar in the answer to 9/9/71; also extending defts. Financial Enterprises of Bahamas Ind. and Homes Shipping, A.S. to answer or other acove to vacate service of rocess to 9/9/71, is ordered. Hottey, J.  13:71 Filed pltffs notice to take deposition of deft Hesnes Shipping A.S.  13:71 Filed pltffs notice to take deposition of deft Hesnes Shipping A.S.  13:71 Filed pltffs notice to take deposition of deft Hesnes Shipping A.S.  13:73 Filed pltffs notice to take deposition of deft Hesnes Shipping A.S.  13:74 Filed pltffs notice to take deposition of deft Person Chartering Corp.  13:75 Filed pltffs notice to take deposition of deft Hesnes Shipping A.S.  13:77 Filed deft. Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  10:10-71 Filed deft's Memorandum of Law in support of motipn p.27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  10:27-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  10:28-71 Filed Missens of Coft, Financial Enterprises of mahamas, Lid. to complaint.  10:28-72 Filed ABSER of Coft, Financial Enterprises of mahamas, Lid. to complaint.  10:28-72 Filed ABSER of Coft, Financial Enterprises of mahamas, Lid. to complaint.  10:28-73 Filed ABSER of Coft, Financial Enterprises of mahamas, Lid. to complaint.  10:28-74 Filed ABSER of Coft, Financial Enterprises of mahamas, Lid. to complaint.  10:28-75 Filed ABSER of Coft, Financial Enterprises of mahamas, Lid. to complaint.  10:28-77 Filed Pltff Staleo Intl Coft. \$500.00 Rodd as security for costs, Survey C	
to answer to 9/9/71. So proceed, Pierce, J.  11-71 How betice of apparamace for Financial Enterprises of Bahamas, tto. and Bernes Shipping, A.S.  119-71 Filed Stipulation and order extending defts. Persoc Unsterning Corp. and Per Armstein Armebyr Stine to answer to 9/9/71; also extending defts. Financial Enterprises of Bahamas, td. and Homes Shipping, A.S. to answer or other move to vacate service of rocess to 9/9/71, also extending defts. Finance to vacate service of rocess to 9/9/71, ac ordered, hetler, J.  13-71 Filed plfffs notice to take deposition of the deft Financial Enterprises of Bahamas Itd.  13-71 Filed plfffs notice to take deposition of deft Hesnes Shipping, A.S.  13-72 Filed plfffs notice to take deposition of deft Per Armstein Armeberg  12-71 Filed plfffs notice to take deposition of deft Persoc Chartering Corp.  13-72 Filed plfffs notice to take deposition of deft Persoc Chartering Corp.  10-71 Filed deft.Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  10-10-71 Filed deft's Memorandum of Law in support of motipn  10-27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  10-28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  10-28-71 Filed Hemo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  10-28-72 Filed AlSuma of the Henry Submitted and signed this day. So Ordered; Ryan, J.  10-28-73 Filed Alsuma of the Henry Submitted and signed this day. So Ordered; Ryan, J.  10-28-74 Filed Alsuma of the filed set of the filed set of the complaint.  10-28-75 Filed Alsuma of the filed set of the filed	
to answer to 9/9/71. So proceed, Pierce, J.  11-71 How Botice of approximate for Financial Enterprises of Bahamas, No. and Botice of approximate for Firancial Enterprises of Bahamas, No. and Botice of appearance for Firance Chartering Corp. and Per Armstein Armeby Filed Stipulation and order extending defts. Perceo Chartering Corp. and Fer Armstein Armebyrs's time to answer to 9/9/71, also extending defts. Finance in Armebyrs's time to answer to 9/9/71, also extending defts. Finance to take deposition of the deft Financial Enterprises of Bahamas Ltd.  13-71 Filed pltffs' notice to take deposition of deft Hesnes Shipping .A.S.  13-72 Filed pltffs' notice to take deposition of deft Per Armstein Armeberg Philed pltffs' notice to take deposition of deft Perce Chartering Corp.  13-73 Filed pltffs' notice to take deposition of deft Perce Chartering Corp.  13-74 Filed pltffs' notice to take deposition of deft Perce Chartering Corp.  13-75 Filed pltffs' notice to take deposition of deft Perce Chartering Corp.  13-76 Filed deft.Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  13-16 Filed deft's Memorandum of Law in support of motipn p.27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  13-28-17 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  13-72 Filed Simp and order that pltff. and signed this day. So Ordered; Ryan, J.  13-73 Filed Album of the Americal Enterprises of anhama, Ltd. to complaint.  13-74 Filed Album of the Americal Enterprises of anhama, Ltd. to complaint.  13-75 Filed Album of the Americal Enterprises of anhama, Ltd. to complaint.  13-76 Filed Pltffs Affidavit & Notice of tion to crop partice under Ltd. Rule of the Complaint of the Complai	е.,
Bernes Shipping, A.S.  2.17-71. Filed Stigulation and order extending defts. Peraco Chartering Corp. and Per Armstein Arneburg's time to asswer to 9/9/71; also extending defts. Fine Enterprises of Gahamas, i.d. and We new Shipping, A.S., i.e. asswer or other acove to vacate service of rocess to 9/9/71. Economical Enterprises of Bahamas Ltd.  3. 13-71 Filed pltffs' notice to take deposition of the deft Financel Enterprises of Bahamas Ltd.  3. 13-72 Filed pltffs' notice to take deposition of deft Hesnes Shipping, A.S., i. 13-73 Filed pltffs' notice to take deposition of deft Per Armstein Armeterg of 13-74 Filed pltffs' notice to take deposition of deft Peraco Chartering Corp.  3. 13-75 Filed pltffs' notice to take deposition of deft Peraco Chartering Corp.  3. 13-76 Filed deft. Fianigan and Loveland, S.A. Affdvt. and notice of mot included the deft's Memorandum of Law in support of motipn p. 10-71 Filed deff's Memorandum of Law in support of motipn p. 27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  3. 13-72 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  3. 28-71 Filed Hemo Endorsed on motion 'filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  3. 3-72 Filed Assem of ceft. Financial Enterprises of Cahaman, Ltd. to emplaint. The pa. 19-72 Filed memo endorsed en Motion filed 'ept 19-1976. The opposition papers he been received, and application appears to recribe the memorance and application appears to reprise to the proposition papers he been received, and application appears to reprise to the parties of the filed pltff Sticko Intic Corp. Sp00200 Bond as security for costs, 'altical pltff Sticko Intic Corp. Sp00200 Bond as security for costs, 'altical pltff Sticko Intic Corp. Sp00200 Bond as security for costs, 'altical pltff's memoral complaint. The complaint. and consolidate.  3. 1	
2.17-71 Filed Stigulation and order extending derits. Person Chartering Corp. and Pur Armstein Armeby 119-71 Filed stigulation and order extending derits. Person Chartering Corp. and Per Armstein Armebyrg's timy to answer to 9/9/71; also extending defits. Fine Enterprises of Sahamas, I.d. and H. ones Shipping. A.S. to answer or other move to vacute service of rocess to 9/9/71, c. ordered. Hetley, J. 13-71 Filed pltffs' notice to take deposition of the deft Financial Enterprises of Bahamas Ltd.  13-71 Filed pltffs' notice to take deposition of deft Hesnes Shipping A.S. 13-72 Filed pltffs' notice to take deposition of deft Per Armstein Armeberg 13-74 Filed pltffs' notice to take deposition of deft Person Chartering Corp. 10-71 Filed deft. Finangan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  13-72 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  1 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J. 19-28-71 Filed Memo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. 19-19-72 Filed Advise of ort. Henses Shipping, A.S. to occ. 1s.int. 19-19-72 Filed Advise of ceft. Financial Enterprises of Cahaman, Ltd. to captaint. 19-19-72 Filed Advise of ceft. Financial Enterprises of Cahaman, Ltd. to captaint. 19-19-72 Filed memo endorsed on Motion filed Part 19-19-72. Bo opposition papers have been received, and application app. To retribute under File Pale filed file file filed Pale filed Filed Pale filed Filed Filed Filed Filed Pale filed Filed Filed Filed Filed Filed Pale filed	
Armstein Armebray's time to answer to 9/9/71; also extending defts. Fina deve to vacate service of rocess to 9/9/71; also extending defts. Fina deve to vacate service of rocess to 9/9/71. So ordered. Hetley, J. 13-71 Filed pltffs' notice to take deposition of the deft Financial Enterprises of Bahamas Ltd.  13-71 Filed pltffs' notice to take deposition of deft Hesnes Shipping .A.S. 13-71 Filed pltffs' notice to take deposition of deft Per Emstein Armeberg .13-71 Filed pltffs's notice to take deposition of deft Perace Chartering Corp. 13-71 Filed deft. Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  13-71 Filed deft's Memorandum of Law in support of motion p. 27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk. p. 28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J. 1-16-17 Filed Hemo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. 1-16-18 ASMER of coft. Financial Enterprises of Enhance. Ltd. to complaint. no.3-72 Filed ASMER of coft. Financial Enterprises of Enhance. Ltd. to complaint. no.3-72 Filed defts' notice of rotion, He: For Security of Cosm. Ret. 9-29-92 till-72 Filed memo endorsed on Motion filed ept 19-1972. No opposition papers be been received, and application appears to the representation of the filed pltfs Affidavit & Notice of tion to crop partice under hat Rule 11 to 11-72 Filed pltfs Affidavit & Notice of tion to crop partice under hat Rule 11 to 11-72 Filed pltfs Effect of the Cosm. Special lates for costs, "ational Surety Corp. Priled pltfs Miled pltfs School Bend security for costs be Surety Corp.  1-2-72 Filed pltfs Affidavit & Notice of tion to crop partice under hat Filed pltfs manifold commands to place the pltfs motion of the pltfs motion in apport of its notion. Filed Death, 1572: Respectfully submi	
Armstein Arneberg's time to answer to 9/9/71; also extending defts. Fine converted by the content of adamas, itd. and is ones Shipping, A.S. to answer or other move to vacate service of rocers to 9/9/71. Secondered. Hetley, J. 13-71 Filed pltffs' notice to take deposition of the deft Financial Enterprises of Bahamas Ltd. 13-71 Filed pltffs' notice to take deposition of deft Hermstein Armeberg. 13-71 Filed pltffs' notice to take deposition of deft Fer Armstein Armeberg. 13-71 Filed pltffs' notice to take deposition of deft Ferac Chartering Corp. 10-71 Filed deft. Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71 10-71 Filed deft's Memorandum of Law in support of motipn p. 27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk. 10-12 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J. 10-28-71 Filed Hemo Endorsed on motion filed 9-10-71Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. 10-28-72 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-72 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-72 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-72 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-72 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-72 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-72 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-73 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-74 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas, Lid. to explaint. 10-28-75 Filed A.B.E.R of ceft. Financial Enterprises of Calabamas Filed Calabamas, Calabamas Filed Calabamas, Calabamas Filed	: r
anove to vacate service of rocess to 9/9/71. Le ordered. Netley, J.  13-71 Filed pltffs' notice to take deposition of the deft Financial Enterprises of Bahanas Ltd.  13-71 Filed pltffs' notice to take deposition of deft Hesnes Shipping .A.S.  13-72 Filed pltffs' notice to take deposition of deft Fer Amstein Ameberg . 13-73 Filed pltffs' notice to take deposition of deft Fer Amstein Ameberg . 13-74 Filed pltff's notice to take deposition of deft Ferac Chartering Corp 10-71 Filed deft. Filanigan and Loveland, S.A. Affdvt. and notice of mot	ncihl
acove to vacate service of rocess to 9/9/71. So ordered, hetley, J.  13-71 Filed pitffs' notice to take deposition of the deft Finanical Enterprises of Bahamas Ltd.  13-71 Filed pitffs' notice to take deposition of deft Hesnes Shipping .A.S.  13-71 Filed pitffs' notice to take deposition of deft Peraci Chartering Corp.  13-71 Filed pitffs' notice to take deposition of deft Peraci Chartering Corp.  13-71 Filed deft.Fianigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  13-72 Filed deft's Memorandum of Law in support of motipn  13-72 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  13-72 Filed stip and order that pitff and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  13-72 Filed Memo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  13-72 Filed ASER of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  13-73 Filed ASER of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  13-74 Filed ASER of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  13-75 Filed ASER of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  13-76 Filed memo endorsed on Motion, Ret For Security of Costa, Ret. 9-29-97  13-77 Filed memo endorsed on Motion filed type 19-1972. No opposition papers by been received, and application app. re meritorious. Hotion granted. So ordere  13-8 Filed pitffs Affidavit & Notice of tion to trop partice under File Rule File  13-75 Filed pitffs Affidavit & Notice of tion to trop partice under File Rule File  13-76 Filed pitffs amended complaint.  13-77 Filed Asert of this Court for review and recember at the defts affidavit in opposition to pltfs motion to drop parties, amended  13-79 Filed Memo Enderse d on pitfs notion filed Backth, 1572: Respectfully sub  13-79 Filed Memo Enderse d on pitfs notion filed backth, 1572: Respectfully	dise
Bahamas Ltd.  13-71 Filed pltffs' notice to take deposition of deft Hesnes Shipping .A.S.  13-71 Filed pltffs' notice to take deposition of deft Hesnes Shipping .A.S.  13-71 Filed pltffs' notice to take deposition of deft Hernestein Armeberg  13-71 Filed pltffs' notice to take deposition of deft Peract Chartering Corp.  10-10-71 Filed deft.Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71  10-17 Filed deft's Memorandum of Law in support of motipn p. 27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  10-28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered, Ryan, J.  10-28-71 Filed Memo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  10-3-72 Filed ABMER of ocft. Financial Enterprises of Enhance, Ltd. to complaint accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  10-3-72 Filed ABMER of ocft. Financial Enterprises of Enhance, Ltd. to complaint p. 19-72 Filed defts' notice of motion. Her for Security of Costa. Ret. 9-29-92 thr-73 Filed memo endorsed on Motion filed Tept 19-1972. No opposition papers he been received, and any liction appers negative in the proposition papers he been received, and any liction appers negative for costa, actional Surety Corp.  10-10-72 Filed pltff Stalco Intl Costa. Stoleon B ond as security for costa, actional Surety Corp.  10-10-73 Filed pltff Stalco Intl Costa and according to the parties, amended complaint.  10-10-74 Filed pltff Intercabbio Cormercial Intersponded to drop parties, amended to complaint.  10-10-75 Filed Memo Englerne d on pltffs notion filed Bachth, 1572: Respectfully sub Thylind defts affidavit in Opposition to pltffs motion filed Bachth, 1572: Respectfully sub Thylind notice of receiving and recommentation, Les ter, J.  11-76 Intiled Memo Englerne d on pltffs not	- 1
13-71 Filed pltffs' notice to take deposition of deft Hesnes Shipping A.S. 13-71 Filed pltffs' notice to take deposition of deft Per Ametein Ameterg 13-71 Filed pltffs's notice to take deposition of deft Perac. Chartering Corp. 10-71 Filed deft.Flanigan and Loveland, S.A. Affdvt. and notice of mot 1 to dismiss complaint. Ret. 9-28-71 10-71 Filed deft's Memorandum of Law in support of motipn 10-27-71 Filed stip and order of discontinuance without prejudice, as to 10-27-71 deft stip and order that pltff. and deft. Flanigan, Loveland, 10-28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, 10-28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, 10-28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, 10-28-71 Filed Memo Endorsed on motion of filed 9-10-71-Motion withdrawn 10-28-71 Filed Memo Endorsed on motion filed 9-10-71-Motion withdrawn 10-28-71 Filed AbwER of ceft. Financial Enterprises of Enhance. Lid. to complaint. 10-3-72 Filed AbwER of ceft. Hennes Shipping, A/B to row laint. 10-3-72 Filed memo endorsed on Motion filed for 15-1972. No operation papers be been received, and application appears to remind the file of the Affidavit & Notice of Wition to crop partice under File Rule filed for Filed pltff Steleo Intl Comp. \$500200 Bond as security for costs, Mational Endorse Filed pltff Intercabbic Cormercial and \$500.00 B and as security for costs of Surety Corp.  10-10-72 Filed pltff Intercabbic Cormercial and \$500.00 B and as security for costs of Surety Corp.  10-10-73 Filed pltff Intercabbic Cormercial and \$500.00 B and as security for costs of Surety Corp.  10-10-74 Filed pltff Intercabbic Cormercial and \$500.00 B and as security for costs of Surety Corp.  10-10-75 Filed pltff Intercabbic Cormercial and Food Could be and Complete and Corp. Filed pltff Steleo Intl Corp. \$500200 B and recementation, Las term, among the completion to pltffs motion to drop parties, amend the completion and consolidate.  10-73 Filed pltff Steleo Intl Corp. Steleo Balance and Inter	he
13-71 Filed pltff's notice to take deposition of deft Per Amstein Armeberg 13-71 Filed pltff's notice to take deposition of deft Peract Chartering Corp. 10-71 Filed deft.Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71 10-10-71 Filed deft's Memorandum of Law in support of motipn 10-27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk. 10-28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J. 10-28-71 Filed Memo Endorsed on motion filed 9-10-71Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. 10-28-72 Filed ANNER of coft. Financial Enterprises of Enhance, Ltd. to complaint. 10-28-72 Filed ANNER of coft. Financial Enterprises of Enhance, Ltd. to complaint. 10-28-72 Filed Memo endorsed on Motion filed Prise. Security of Costs. Ret. 9-29-92 Filed defts' notice of motion, Her For Security of Costs. Ret. 9-29-92 Filed defts' notice of motion, Her For Security of Costs. Ret. 9-29-92 Filed pltf State of Motion of the corp parties under Fact Half of the Costs. Inch. 72 Filed pltff State of Intl Cosps. \$500200 Bond as security for costs, Intluded Pltff State of Intluded Complaint. 10-28-73 Filed pltff State of Intl Cosps. \$500200 Bond as security for costs. Surety Cosps. 10-28-74 Filed pltff State of Intluded Complaints. 10-29-75 Filed Pltff State of Intluded Complaints. 10-29-76 Filed Pltff State of Intluded Complaints. 10-29-77 Filed Memo Endorse d on pltffs notion filed Dachth, 1572: Respectfully sub- 10-29-78 Filed Pltff State of Intluded Complaints. 10-79 Filed Memo Endorse d on pltffs notion filed Dachth, 1572: Respectfully sub- 10-79 Filed Intluded Complaints of its notion.	_
13-71 Filed pltff's notice to take deposition of deft Peract Chartering Corp. 10-71 Filed deft.Flanigan and Loveland, S.A. Affdvt. and notice of mot to dismiss complaint. Ret. 9-28-71 10-10-71 Filed deft's Memorandum of Law in support of motipn 10-27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk. 10-28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J. 10-28-71 Filed Memo Endorsed on motion filed 9-10-71Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. 10-28-71 Filed Albert of coft. Financial Enterprises of Charman, Ltd. to complaint. 10-28-72 Filed Albert of coft. Financial Enterprises of Charman, Ltd. to complaint. 10-28-73 Filed Memo Endorsed on Motion. Ret For Security of Comma Ret. 9-29-92 Filed memo endorsed on Motion filed ept 19-1972. No opposition papers be been received, and application appears representations. Motion granted, So ordered Lasker, J. 10-28-72 Filed pltff Stalco Intl Corp. \$500200 Bond as security for costs, "ational Endorse" Filed pltff Stalco Intl Corp. \$500200 Bond as security for costs, "ational Surety Corp. 10-28-73 Filed cltff Intercabbio Commercial and \$500.00 B ond as security for costs be Surety Corp. 10-29-73 Filed cltff Stalco Intl Corp. \$500200 Bond as security for costs be Surety Corp. 10-20-73 Filed Cltffs amended complaint. 10-20-74 Filed Memo Endorse d on pltffs notion filed Dachth, 1572: Respectfully sub Registrates of this Court for review and recommendation, last ker, J. 11-76 Hilled notice of recommendation.	
p.10-71 Filed deft.Flanigan and Loveland, S.A. Affdvt. and notice of motion to dismiss complaint. Ret. 9-28-71 p.10-71 Filed deft's Memorandum of Law in support of motion p.27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk. p.28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J. p.28-71 Filed Memo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. p.28-72 Filed A SWER of c.ft. Financial Enterprises of Cahaman, Ltd. to complaint. p.19-72 Filed ALSWER of the L.Hesnes Empirical Enterprises of Contact Ret. 9-29-92 p.19-72 Filed ALSWER of the L.Hesnes Empirical Enterprises of Contact Ret. 9-29-92 p.19-72 Filed ALSWER of the L.Hesnes Empirical Enterprises of Contact Ret. 9-29-92 p.19-72 Filed ALSWER of the C.Hesnes Empirical Enterprises of Contact Ret. 9-29-92 p.19-72 Filed Deft Stational Metion filed the pt 19-1972. No opposition papers be been received, and application appers represented by the proposition papers be been received, and application appers represented by the filed plane of the Stocker Ret. 9-29-92 p.19-72 Filed plane Endorse Contact Ret. 9-29-92 p.19-1-72 Filed plane Endorse Contact Ret. 9-29-92 p.19-1-73 Filed plane Endorse Contact Ret. 9-29-92 p.19-1-74 Filed plane Endorse Contact Ret. 9-29-92 p.19-1-75 Filed plane Endorse Contact Ret. 9-29-92 p.19-1-75 Filed Plane Endorse Contact Filed Endorse Ret. 9-29-92 p.19-1-76 Filed Plane Endorse Contact Filed Endorse Ret. 9-29-92 p.19-1-77 Filed Memo Endorse Contact Filed Endorse Ret. 9-29-92 p.19-1-79 Filed Memo Endorse Contact Filed Endorse Ret. 9-29-92 p.19-1-79 Filed Memo Endorse Contact Filed Endorse Ret. 9-29-92 p.19-1-79 Filed Memo Endorse Contact Filed Endorse Ret. 9-29-92 p.19-19-19-19-19-19-19-19-19-19-19-19-19-1	
p.10-71 Filed deft's Memorandum of Law in support of motion p.27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk. p.28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn withou prejudice. So Ordered; Ryan, J. p.28-71 Filed Memo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. p. 28-72 Filed A SWER of coft. Financial Enterprises of unhaman, Ltd. to complaint. n.3-72 Filed AISEER of coft. Financial Enterprises of unhaman, Ltd. to complaint. p. 19-72 Filed AISEER of coft. Hearnes Empirical Enterprises of unhaman, Ltd. to complaint. p. 19-72 Filed AISEER of coft. Hearnes Empirical Enterprises of unhaman, Ltd. to complaint. p. 19-73 Filed alsEER of coft. Hearnes Empirical Enterprises of unhaman, Ltd. to complaint. p. 19-74 Filed memo endorsed on Motion filed to the 19-1972. No opposition papers be been received, and application apparent reprise for the proposition papers be been received, and application apparent reprise for costs. Hotion granted; So ordere lasker, J. cc-72 Filed pltff Stelco Intl Corp. \$500207 Bond as security for costs, "ational Ench-72 Filed pltff Stelco Intl Corp. \$500207 Bond as security for costs, "ational Surety Corp.  Deck-72 Filed pltff Stelco Intl Corp. \$500207 Bond as security for costs, "ational Surety Corp.  June 1-72 Filed pltff Stelco Intl Corp. \$500207 Bond as security for costs be Surety Corp.  June 2-73 Filed pltff samended complaint. and complaints amended complaint.  Lune 2-74 Filed Memo Enderse d on pltffs motion filed Dachth, 1572: Respectfully sub Magistrates of this Court for review and recommensation, las her, J.  11-74 Hilled Gen on the court of its motion.	ion
p.10-71 Filed deft's Memorandum of Law in support of motion p.27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk. p.28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J. p.28-71 Filed Memo Endorsed on motion filed 9-10-71-Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J. p. 27-72 Filed A SWER of octt. Financial Enterprises of enhance, Ltd. to complaint. p. 19-72 Filed A SWER of octt. Financial Enterprises of enhance, Ltd. to complaint. p. 19-72 Filed A SWER of octt. Financial Enterprises of enhance, Ltd. to complaint. p. 19-72 Filed A SWER of octt. Financial Enterprises of enhance, Ltd. to complaint. p. 19-73 Filed A SWER of octt. Financial Enterprises of enhance, Ltd. to complaint. p. 19-74 Filed memo endorsed on Motion filed ept 19-1972. No opposition papers he been received, and application app. reperitorious. Motion granted. So ordere lasker, J. cc72 Filed pltff: Affidavit & Notice of tion to crop partice under Finance filed pltff: Stalco Intl Corp. \$500200 Bond as security for costs, ational Ecd72 Filed pltff: Stalco Intl Corp. \$500200 Bond as security for costs, ational Ecd72 Filed pltff: Ittfs amended complaint.  Surety Corp.  Judi-72 Filed pltff: Intercabbic Cormercial ata \$500.00 B ond as security for costs to Surety Corp.  Judi-73 Filed Memo Endorse d on pltfs notion filed Bachth, 1972: Respectfully sub Importance of this Court for review and recommendation, Les Ler, J.  10-73 Filed Memo Endorse d on pltfs notion filed Bachth, 1972: Respectfully sub Importance of this Court for review and recommendation, Les Ler, J.  11-74 End notice of recommendation.	LON
p.27-71 Filed stip and order of discontinuance without prejudice, as to deft. Flanigan and Loveland, S.A. Only. Clerk.  p.28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  p.28-71 Filed Memo Endorsed on motion filed 9-10-71Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  p.28-72 Filed A SWER of ceft. Financial Enterprises of Chaman, Ltd. to complaint.  p. 19-72 Filed A SWER of ceft. Financial Enterprises of Chaman, Ltd. to complaint.  p. 19-73 Filed A SWER of ceft. Financial Enterprises of Chaman, Ltd. to complaint.  p. 19-74 Filed A SWER of ceft. Financial Enterprises of Chaman, Ltd. to complaint.  p. 19-75 Filed A SWER of ceft. Financial Enterprises of Chaman, Ltd. to complaint.  p. 19-76 Filed A SWER of ceft. Financial Enterprises of Chaman, Ltd. to complaint.  p. 19-77 Filed A SWER of ceft. Financial Enterprises of Chaman, Ltd. to complaint to Enterprise with the Complaint of Complaint to Complaint to Complaint.  Local-72 Filed pltff Stilco Intl Complete \$500,000 Bond as security for costs, Surcey Complaint.  Local-72 Filed pltff Stilco Intl Complete Spoo,000 Bond as security for costs of Surcey Complete.  June 19-75 Filed Complete Complete the Complete Complaint.  Local-77 Filed Complete Complete the Complete Comp	
pp. 28-71 Filed stip and order that pltff. and deft. Flanigan, Loveland, that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  p. 28-71 Filed Memo Endorsed on motion filed 9-10-71Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  Pp. 19-72 Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  Pp. 19-72 Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  Pp. 19-72 Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  Pp. 19-72 Filed Memo endorsed on Motion filed Pp. 19-1972. No opposition papers be been received, and application apport or remitorious. Motion granted. So ordere lasker, J.  Filed pltff & Affidavit & Notice of Ction to crop partice under Fact Half filed End-72 Filed pltff Etcleo Intl Corp. \$500207 Bond as security for costs, Mational End-72 Filed pltff Intercabbio Commercial and \$500.00 Bond as security for costs be Surety Corp.  Filed pltff Intercabbio Commercial and \$500.00 Bond as security for costs be Surety Corp.  Janie-73 Filed Pltffs amended complaint.  Complaint. and consolidate.  Janie-73 Filed Memo Enderse d on pltffs notion filed Enchth, 1972: Respectfully sub Surety Corp.  Magistrates of this Court for review and recommendation, Las Ler, J.  11-74 Ended notice of reasylve apt.	_
that the motion now returnable on 9-28-71 be withdrawn without prejudice. So Ordered; Ryan, J.  p. 28-71 Filed Memo Endorsed on motion filed 9-10-71Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  p. 27-72 Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  p. 19-72 Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  p. 19-72 Filed A SWEN of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  p. 19-72 Filed Mefts' notice of motion, He: For Security of Commander, 9-20-92 till-72 Filed memo endorsed on Motion filed Pet 19-1972. No opposition papers be been received, and application appers reprincious. Motion granted. So ordere lasker, J.  filed pltf:s Affidavit & Notice of tion to crop parties under Ltd. Hule 21 to complaint.  Ltd72 Filed pltf: Staleo Intl Comp. 12 \$500200 Bond as security for costs, National Eccl-72 Filed pltf: Staleo Intl Comp. 12 \$500200 Bond as security for costs, National Eccl-72 Filed pltf: Not Ltd \$500,000 Bond security for costs, National Eccl-72 Filed pltf: Not Ltd \$500,000 Bond security for costs, National Eccl-72 Filed pltf: Not Ltd \$500,000 Bond security for costs, National Eccl-72 Filed pltf: Staleo Intl Commercial Return to pltfs motion to drop parties, amend to complaint.  June 1-73 Filed Memo Enderse d on pltfs notion filed Dachth, 1972: Respectfully sub Nagistrates of this Court for review and recommendation, Laster, J. 11-76 Ended Notice of recession of the motion.	_
prejudice. So Ordered; Ryan, J.  p. 28-71 Filed Memo Endorsed on motion filed 9-10-71Motion withdrawn accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  p. 27-72 Filed A SWER of ceft. Financial Enterprises of Enhanan, Lid. to complaint.  p. 19-72 Filed A SWER of ceft. Financial Enterprises of Enhanan, Lid. to complaint.  p. 19-72 Filed AlbWER of the Liennes Shipping, A to row 1 sint.  p. 19-72 Filed memo endorsed on Motion, Re; For Security of Costs. Ret. 9-29-92 t17-77 Filed memo endorsed on Motion filed the play. No opposition papers have been received, and application appers reprisorious. Motion granted; So ordered lasker, J.  filed play Affidavit & Notice of thion to crop partice under Fact Pale 21 to complaint.  Lid-72 Filed play Staleo Intl Corp. \$5002007 Bond as security for costs, National Surety Corp.  Lock-72 Filed play Staleo Intl Corp. \$5002007 Bond as security for costs be Surety Corp.  Lock-72 Filed play Staleo Intl Corp. \$5002007 Bond as security for costs be Surety Corp.  Lock-73 Filed lattis amended complaint.  January Priced Lattis amended complaints.  January Priced Lattis amended complaints and complaints.  January Priced Lattis amended complaints.  January Priced Lattis amended complaints and complaints.  January Priced Lattis amended complaints and complaints and complaints and complaints.  January Priced Lattis amended complaints and complaints and complaints and complaints.  January Priced Lattis amended complaints and complaint	5.A.
accordance with stip. Submitted and signed this day. So Ordered; Ryan, J.  Asy-72 Filed A SwER of coft. Financial Enterprises of Cahaman, Lid. to complaint.  Asy-72 Filed A SwER of coft. Financial Enterprises of Cahaman, Lid. to complaint.  Asy-72 Filed A SwER of coft. Financial Enterprises of Cahaman, Lid. to complaint.  Asy-72 Filed A SwER of coft. Financial Enterprises of Cahaman, Lid. to complaint.  Asy-72 Filed A SwER of coft. Financial Enterprises of Cahaman, Lid. to complaint.  Asy-72 Filed defts notice of Motion, Re: For Security of Costs. Ret. 9-20-92  Filed memo endorsed on Motion of the corp partice under File Pale 1.  Lid72 Filed pltf: Affidavit & Notice of Liton to trop partice under File Pale 1.  Lid73 Filed pltf: Stalco Intl Corp. \$5002007 Bond as security for costs. Surety Corp.  Dech-74 Filed pltf: Mil Ltd \$500.00 Bond security for costs. Surety Corp.  Jack-75 Filed pltf: amended complaint.  Complaint. amended complaint.  Complaint. and consolidate.  Jack-75 Filed Memo Enderse d on pltf: notion filed Dachth, 1572: Respectfully sub Magistrates of this Court for review and recommendation, less ter, J.  11-76 Hailed notice of reassipport of its motion.	The second contract of
Ordered; Ryan, J. Filed A DWER of coft. Financial Enterprises of Cahaman, Ltd. to complaint.  n.3-72 Filed ADWER of coft. Financial Enterprises of Cahaman, Ltd. to complaint.  p. 19-72 Filed ADWER of coft. Hesses Shipping, 4/5 to row laint.  p. 19-72 Filed Metts' notice of motion, He: For Security of Costs. Het. 9-20-92 t17-72 Filed memo endorsed on Motion filed the pt 19-1972. No opposition papers by been received, and application appers no rectivations. Motion granted, So ordere Lasker, J.  cc72 Filed pltf: Affidavit & Notice of thion to trop partice under File Rule filed complete the pt 19-1972 Filed pltf: Stalco intl Costs. \$500200 Bond as security for costs, hational Ender-72 Filed pltf: Filed pltf: Intercabbio Cormercial att \$500.00 B and as security for costs by Surety Corp.  June 19-73 Filed Memo Enderse does pltf: notion filed Dachth, 1972: Respectfully sub Magistrates of this Court for review and recommendation, less ter, J.  11-74 Hailed notice of reassippendit.	ln
Filed A SWER of ceft. Financial Enterprises of Enhance, Ltd. to complaint.  n.3-72 Filed ANSEER of the Hearnes Chipming, 4/5 to row laint.  p. 19-72 Filed defts' notice of motion, Re; For Security of Cosman Ret. 9-20-92 t17-77 Filed memo endorsed on Motion filed the filed to provide the process of the pro	
p. 19-72 Filed defts' notice of motion, He: For Security of Cos: a. Ret. 9-29-92 t17-72 filed memo endorsed on Motion filed ept 19-1972. No opposition papers has been received, and application appers neritorious. Notion granted, So ordere lasker, J.  certification appers neritorious. Notion granted, So ordere lasker, J.  filed pltff: Affidavit & Notice of thion to crop particularly for costs, "ational Surety Corp.  Luda-72 Filed pltff: Stalco Intl Corp. \$500200 Bond as security for costs, "ational Surety Corp.  Deck-72 Filed pltff FMH Ltd \$500.00 Bond security for costs, "ational Surety Corp.  Surety Corp.  June 1-73 Filed pltff: amended complaint.  Complaint. and consolidate.  June 2-73 Filed Memo Endorse d on pltffs motion filed Dachth, 1972: Respectfully sub Magistrates of this Court for review and recommendation, laster, J.  11-74 Hailed notice of recession of its motion.	
Filed memo endorsed on Motion filed ept 19-1972. No opposition papers has been received, and application appers no neritorious. Motion granted, So ordere lasker, J.  Filed pltff's Affidavit & Notice of thion to trop parties under Fair Rule filed and application appers has been received, and application appers no neritorious. Motion granted, So ordere lasker, J.  Filed pltff's Affidavit & Notice of thion to trop parties under Fair Rule filed and Filed pltff Stalco Intl Corp. \$500200 Bond as security for costs, hational Successory.  Each-72 Filed pltff Filed Stalco Intl Corp. Sound security for costs, hational Successory.  Deck-72 Filed pltff Intercabbio Cormercial att \$500.00 B and as security for costs had successful and sound and security for costs had been compared and population to pltffs motion to drop parties, amend the companint, and consolidate.  June 20-73 Filed Memo Endorse d on pltffs notion filed Dachth, 1972: Respectfully sub Magistrates of this Court for review and recommendation, has her, J.  11-74 Haddeltff's meno in support of its notion.	MZM
Liasker, J.   Filed pltffs Affidavit & Notice of 'tion to crop particl under Fair Rule 21 to Ci-72   Filed pltff Stalco Intl Corp.   \$500200 Bond as security for costs, "stional Dock-72   Filed pltff Num Ltd \$500.00 Bond security for costs, "stional Surety Corp.   Dock-72   Filed pltff Intercabbio Cormercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltff intercabbio Cormercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltff intercabbio Commercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltff intercabbio Commercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltffs amended complaint.   Complaint.   Affidavit in opposition to pltffs motion to drop parties, amend the   Complaint.   and consolidate.   Complaint.	
Liasker, J.   Filed pltffs Affidavit & Notice of 'tion to crop particl under Fair Rule 21 to Ci-72   Filed pltff Stalco Intl Corp.   \$500200 Bond as security for costs, "stional Dock-72   Filed pltff Num Ltd \$500.00 Bond security for costs, "stional Surety Corp.   Dock-72   Filed pltff Intercabbio Cormercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltff intercabbio Cormercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltff intercabbio Commercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltff intercabbio Commercial   ats \$500.00 B and as security for costs be   Surety Corp.   Filed pltffs amended complaint.   Complaint.   Affidavit in opposition to pltffs motion to drop parties, amend the   Complaint.   and consolidate.   Complaint.	re
Filed pltff's Affidavit & Notice of thion to crop particulander Fair Rain 21 to Lucia-72 Filed pltff Staleo Intl Corp. \$500200 Bond as security for costs, "ational Each-72 Filed pltff FMH Ltd \$500.00 Bond security for costs, "ational Surety Corp.  Deck-72 Filed pltff Intercabbio Cormercial att \$500.00 B and as security for costs be Surety Corp.  Surety Corp.  Jack-73 Filed lttffs amended complaint, complaint, and consolidate.  Jack-73 Filed Memo Enderse d on pltffs motion filed Dachth, 1972: Respectfully sub Magistrates of this Court for review and recommendation, les ter, J.  11-76 Hailed notice of reassipposit.	1,
Deck-7 Filed nltff Intercambio Cormercial ats \$500.00 B and as security for costs be Surety Corp.  Jack-7 Filed Little amended complaint.  Jack-7 Filed Little amended complaint.  Complaint. and consolidate.  Jack-73 Filed Memo Enderse d on pltffs nction filed Backth, 1972: Respectfully sub Bigistrates of this Court for review and recommendation, les Ler, J.  11-76 Entled Interes of resempents.	
Deck-77 Filed pltff Intercrambio Cormercial ats \$500.00 B and as security for costs be Surety Corp.  Jack-77 Filed Litts amended complaint.  and 5-73 Filed Memo Enderse d on pltffs motion filed Deckth, 1572: Respectfully sub Bristrates of this Court for review and recommendation, les Ler, J.  11-76 Ended notice of resempenate.	ai nd th
Deck-77 Filed pltff Intercrambio Cormercial ats \$500.00 B and as security for costs be Surety Corp.  Jack-77 Filed Litts amended complaint.  and 5-73 Filed Memo Enderse d on pltffs motion filed Deckth, 1572: Respectfully sub Bristrates of this Court for review and recommendation, les Ler, J.  11-76 Ended notice of resempenate.	Surety Co
Surety Corp.   Surety Corp.   Incle	
Problem Prized Litts amended complaint.  and 2-73 Filed defis affidavit in opposition to pltfs motion to drop parties, amend the complaint. and consolidate.  Un22-73 Filed Memo Enderse d on pltfs notion filed Dachth, 1972: Respectfully sub linguistrates of this Court for review and recommendation, laster, J. 16-73 Filed pltfs memo in appoint of its motion.  11-76 Hailed notice of rescriptorit.	ational -
Magistrates of this Court for review and recommendation, laster, J 6-73 Filed paties mero in empiors of its motion.  11-76 Epided notice of reasonments.	
Un22-73 Filed Memo Enderse d on pliffs notion filed Dachth, 1972: Respectfully sub Magistrates of this Court for review and recommendation, les Ler, J r 6-73 Filed pliff's meno in support of its notion.	
Magistrates of this Court for review and recommendation, laster, J 6-73 Filed paties meno in apport of its motion.  11-76 Mailed notice of reassippends.	2
r 6-73 Filed places meno in support of its notion.	
11-76 Hailed notice of reassignment.	itted to
- 11-76 Hailed notice of reassistents.	-
1/17   pro-trial before of a traile	
	ACT OF THE PARTY O
c 6-74 Piled pltffr interrogs.	1
. 16-74 Filed deposition of Lucy Forger, Mailed notices.	

BEST COPY AVAILABLE

## Docket Entries 71 Civil 3118

71 Civ. 3118

Stalco Int'l Corplet amo -wa- Peraco Chartering Corp et al 71

	Page #3.	too
D. C. 110 Rev. Civil Discret Confibriation		002
DATE	PROCEEDINGS	
Dec. 10-74 Filed pltffs' request to admit.		
Ecb. 13-75 Filed meno cidorsed on mation (i)	ed 2-4-75This potion is referred t	o Magistrate
1 Scoreiner to meat . report So	Lidered - Com t ffiled in 72ciu/92	61
72 Civ. 49%	notion to amend complaint-Ret. 2-21-	75(filed in
Feb. 04-25 Filed pleff's med and on of law i		
F.b. 19-75 filed deft's memo: andum inoppositi	on to pitfis' motion to amend compla	int.
ieb. 12-12 filed delt's alidet in opposition	to leave to amend	
Feb. 19-75 Filed deft's affdyt, Rule 9g stat Rct. 2-21-75.		judgment.
Fcb.19-7; Filed deit's memorandum in suppor	t of cross motion to dismiss.	
Feb. 19-75 Filed deft's answers to interrogs Feb. 19-75 Filed deft's supplemental answers		
Teb. 19-75 Filed deft's requests to admit.	to interrogs.	
Feb. 19-75 Filed deft's notice of deposition	of Stalco Intil Core	
Feb. 19-75 Filed deft's notice of deposition	of Mil Ltd	
Feb. 19-75 Filed deft's notice of deposition	of Intercambio Comercial Vata V Ann	0737 ( )
res. 19-75 Filed Albert of deft. Peraco Char	tering Corp.	
Fcb. 19-75 Filed ANSWER of deft. Per Arnstei	n Arneberg.	
Mor 11.75 Piled Pltffs, Request to Admit.		- +
Mar. 17-75 Filed pltff's statement under Rul	e 9(g).	
Ner. 17-75 Filed pltff's reply affdyt in nup Mar. 17-75 Filed pltff's memorandum in oppos	port of motion to amend.	I
Mar. 17-75 Filed pltff's reply memorandum in	ition to derta motion to dismiss.	
3-20-75 Renesigned toJudge Lasker, mm	support of motion to amend.	
Mar. 24-75 Filed defts reply affort in		
Mar. 24-75 Filed defts reply affdyt to	reviewing motions before the	smiss.
Mar. 24-75 Filed defts reply memorandu	in support of cross motion f	court.
An Ji-75 Piled Pittis Answer to Counterc	claim.	or dismissa
4-23-75 Piled Deft's AMEDED ANSWER TO C	מיופן ש	
4-29-15 Filed Merg-End on back of motion	filed 2-19-75 Pagnertfully reform	d to Mag
: DURIELDER TOT FEVIEW & HARDWICE	ndation looker t	
W-22 71 DREWILLIAM CUNTERPORTS HEND HI	· ya	-
9-26-75 Filed pltffs affdyt in opp	2200 201-1061-	
recommendation.	osition to Mag. Schreibers rep	ort &
9-26-75 Filed pltffs memo of law i	n opposition to Magistrate's re	eport &
1-30-76 Tile! Report & Large and Common	Hegistrate Schreiber, C. H. d in 22 cl	
1-30-76 1:100 2nd Man End. as enter the	1. 5-7-75 The on to display in grace	3
introduction in the constraint i	in denied for the reserve set forth	25115
at led ratio		-
	The second secon	Notice of the second of the se

## DOCKET ENTRIES 72 CIVIL 4926

TALCO INTERNATIONAL CORP. VS. Financial Enterprises=

JUDUL LTWILL

[32] 创i。 4.37

FATE	PROCEPDINGS	Die Order
		Jedament No
	Filed complaint & iss of summons.	
Jec. 4-72	Filed surnois with marshal's ret. Served:	
	Donald Mooney by Nr. Cro. at. on 11/21/72.	
2-1-74	Tarken - Tarken - Tarken	
Jun 6-7h	Filed Interrogs porrounded by Pliffs to be onewared by defte.	
Jul 29-74	Filed Notice of Motion by Pltff for an order to strike deft's answerret.5-12-	741
us 12, 74	Filed Defts affdyt of D.F. Mooney in responce to pltff's motion to strike.	
Sept 5-74.	Filed Nemo-End on back of motion filed 7-29-7h This Motion is assigned to Mag.	
	Schreiber to hear and reportSo OrderedOwen. J. Filed Deposition(Sealed) of Lucy serger before D.H. Jones, Vice Commul of the U.	
Stp 15-14	at Tel Aviv, Israel. (filed in 71 div 3110 1.0)	
	2t le. Aviv, Israel. (filed in /I Clv ) 110 107	
	Mailed notice of reassignment.	
11-11-17	PRE-TRIAL CONFESCION FELD BY - LANGUE	-
11-76 37	PRE-TRIAL CONFERENCE HELD BY	
	Filed Pirets. Memorandua of Law	
- Feb 4-75	Filed Pltffs affiduvit and motion for an order to seemd the complaint, ret.2/21/	25
	Filed memo endorsed on motion filed 2-4-75-This motion is referred to Magistrate	
· eb. 13-73	Schreiber to hear 5 report. So OrderedOwen, J.	
Fab 19-75	Filed deft's memorandum in opposition to motion to amend complaint(Filed in 72	
. reb. 15-75	civ. 5118)	
Feb 19-75	Filed deft's affdyt in opposition to leave to amend. (filed in 71 Civ. 3118)	
Eab 19-75	Filed deft's notice of cross-motion to dismiss-Ret. 2-21-75(filed in 71-3118)	
Feb 19-75	Filed deft's memorandum in support of cross-motion to dismiss(filed in 71-3118)	
Feb. 19-75	Filed deft's answers to interrogs. (filed in 71-3118)	
Feb. 19-75	Filed deft's supplemental answers to interrogs. (filed in 71-3118)	
Feb. 19-75	Filed ceft's requests to admit. (filed in 71-3118)	
Mar. 17-75	Filed pltff's 9 (g) statement. (filed in 71-3118)	
Mar. 17-75	Filed pltff's reply affdyt in support of motion to amend. (filed in 71-3113)	
Mar. 17-75	Filed pltff's memorandum in opposition to defts' motion to dismiss. (filed in 71-3	113)
Har. 17-75	Filed pltff's reply memorandum in support of motion to amend the complaint (filed	71-3118
	Filed ANSWER of pltff. to counterclaim.	C&C
	PRE-TRIAL CONFERENCE HELD BY A-Milia	
	PRE-TRIAL CONFERENCE HELD BY ASAGE /A	The second process or second
	Filed pltff's affdvt 6 notice of motion to amend complaint-Ret. 5-20-75.	
	Filed defts' affdyt in opposition to motion to mend.	
	Filed defts' memorandum in opposition to motion to amend.	
11114 30 35	franciscad draw healy there to feeling I when MIN	
4-20-75	Piled Pitff's Reply affdyt, is support of Motion to/amend the complt.	
4-20-15	Filed Deft. Pinencial Interprises of Bahamas, Ltd., Reener Shipping, A/S and Per Armstein ArmebergAnswer.	
- 12 30	IT - TRILL COUPLINGS HELD BY Willy Soldente	DFM_
5-15-75	LICE THE CONTRACT HELD BY MICH Selection	
5-29-15	Piled Meno-End on back of Motion filed/5-29-75Referred to Mag. Schreiber	
2 37 12	for review a recommendationLacker, J.	
7-25-7;	THE THE SOUTH HATEN BY DELLE S. F.	
1-30-76	FRO-TRUE CONTINUE HELD BY They Salved	
1-20-76	filed 2nd from Louis or mation and 2-4 75 Horiou to dignish is greated. The m	
	motion to smoot the complaint is denied, for reasons set fouth trainer i.	
THE PERSON OF THE PERSON OF	faciled parts	1800 - 1800 - 181
		and the same of the same of

# A 1 COMPLAINT 71 CIVIL 3118

UNITED STATES DISTRICT COURT SCUTHERN DISTRICT OF NEW YORK	7	
STALCO INTERNATIONAL CORPORATION, MMI LTD., and INTERCAMBIO COMERCIAL KATZ Y	î	
ARSARAZ, S.A.,	:	
Plaintiffs,	:	
-against-	:	COMPLAINT
PERACO CHARTERING CORPORATION, FINANCIAL ENTERPRISES OF BAHAMAS, LTD., FLANIGAN	:	
and LOVELAND, S.A., HESNES SHIPPING, A.S., and PER ARNSTEIN ARNEBERG,	:	
	:	
Defendants.		
the sear was been will also was two days with days seen are was also and out of the sear days days do not been seen and the sear days the live ago can been use any call and out the sear days also and the sear days also and the sear days also and the sear days also also also also also also also als	x	

Plaintiffs, by their attorneys, CICHANOWICZ & CALLAN, complaining of the defendants allege upon information and belief as follows:

#### AS AND FOR A FIRST CAUSE OF ACTION

- 1. Plaintiff STALCO INTERNATIONAL CORPORATION is a corporation created and existing under the laws of the State of California having a place of business at 110 East 59th Street New York, New York.
- 2. Plaintiff MMI, LTD. is a limited company created and existing under the laws of the State of Israel having offices and a place of business at 23 Helsinki Street Tel-Aviv, Israel.
  - 3. Plaintiff INTERCAMBIO COMERCIAL KATE Y ARSARAZ, S.A.

is a corporation created and emisting under the laws of the Republic of Mexico having offices and a place of business in Mexico City, Mexico.

- 4. Defendant PERACO CHARTERING CORPORATION is a foreign corporation having offices and a place of business at 17 Battery Place, New York, New York.
- 5. Defendant FINANCIAL ENTERPRISES OF BAHAMAS, LTD.
  is a limited company created and existing under the laws of the
  Bahamas Islands, having offices and a place of business at Nassau,
  Bahamas.
- 6. Defendant FLANIGAN, AND LOVELAND, S.A. is a foreign corporation with offices in the Republic of Panama.
- 7. Defendant HESNES SHIPPING, A.S. is a corporation created and existing under the laws of the country of Norway having its offices in that country.
- 8. Defendant PER ARNSTEIN ARNEBERG is an individual having a place of business at 17 Sattery Place, New York, New York.
  - 9. The amount in controversy exceeds \$10,000.00.
  - 10. During the latter part of 1970 and for the first

five months of 1971 the plaintiffs herein formed an association among themselves named MIMI GROUP one of the purposes of which was to locate an oil carrying or tanker type vessel which would be available for charter or rental to an Israeli company named TANKER SERVICES, LTD., which would employ her in the carriage of oil for a period not in cucess of ten years.

- 11. HIMI GORUP intended, upon locating such a vessel, to act as a broker in the charter transaction between the owner and the charterer and to thereby earn a commission on the charter hire.
- 12. MIMI GROUP, through Mr. Mordechai Goldberg, Vice

  President of plaintiff STALCO INTERNATIONAL contacted the defendant PER ARMSTEIN ARNEBERG to learn if he knew of an available
  tanker.
- 13. Mr. ARNEBERG stated that he knew of such a vessel owned by other persons named the M/T "WARWICK FORT" and that the vessel could be provided to the Israeli charterer if suitable arrangements were made.
- 14. These arrangements consisted of agreement between the defendants herein and the Israeli charterer with regard to the charter or rental rate for the vessel and the agreement of the prospective charterer to establish a \$5,000,000.00 letter of

A 7 Complaint 71 Civil 3118

credit in favor of new owners of the vessel in order to guarantee charter hire payments.

- 15. Defendant ARNEBERG further stated on behalf of all the defendants herein that they would purchase the afcresaid vessel if the things referred to in paragraph 14 above were done and charter the vessel to TANKER SERVICES, LTD.
- 16. These agreements were formally concluded in writing on April 25, 1971 in Tel-Aviv after weeks of discussions and the precise commissions payable to MIMI GROUP were set out in writing to wit, 1.25% of the approximately \$18,500,000.00 purchase price of the M/T "WARWICK FORT" and 1.25% of the charter hire to be earned on the charter party to TANKER SERVICES, LTD.
- greater part of the following month MIMI GROUP was successful in keeping the agreed charter hire and letter of credit offers of TANKER SERVICES, LTD. open to the defendants and, as a consequence, on May 19,1971 a charter party and supporting agreements were entered into between TANKER SERVICES, LTD. on the one hand, and the defendants FLANIGAN AND LOVELAND, S.A., PINANCIAL ENTERPRISES OF DARRAMAS, LTD. and another owning corporation to be named.
  - 18. Thereafter, the defendants failed to purchase the

vessel and to deliver her under the charter party as they had agreed and the purchase of the vessel and charter party did not materialize or go into effect due to the defendants' wilfull breaches of their agreements, all to the plaintiffs' harm and damage in an amount of approximately \$724,098.55, for which the plaintiffs demand judgment.

#### AS AND FOR A SECOND AND ALTERNATIVE CAUSE OF ACTION

- 19. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "l" through "l8" above as if fully set forth hereafter.
- 20. Plaintiffs in reliance upon defendants above representations that they, defendants, would purchase the M/T "WARWICK FORT" and charter her to TANKER SERVICES, LTD. for a period not in excess of ten years, expended large sums of money in travel, communication, entertainment and miscellaneous expenses in their efforts to recure the acceptable charter hire and letter of credit offers from TANKER SERVICES, LTD.
- 21. Defendants knew that their representations as aloresaid would cause and induce plaintiffs to expend the monies referred to in paragraph 20 and further knew that these monies were

A 9
Complaint 71 Civil 3118

being expended and continued to encourage plaintiffs to incur expenses in their efforts to secure the aforesaid offers.

- 22. Defendants, from the outset, knew that they did not have a firm commitment for the vessel, nor even a general understanding with her owners for her purchase and did not, purchase her as they had agreed when the above charter hire and letter of credit offers were given.
- 23. Defendants knew that if this true state of fact were known to the plaintiffs they would not have expended monies as aforesaid and so defendants wilfully concealed the true facts from plaintiffs and wilfully represented false facts as inducements to plaintiffs, all to the plaintiffs harm and damage in an amount of \$100,000.00, for which the plaintiffs demand judgment.

WHEREFORE, the plaintiffs respectfully pray that they have judgment, joint and several, against the defendants for the amounts demanded herein with interest at the rate of 7½% per annum from the first day of June, 1971.

CICHANOWICZ & CALLAN

Attorneys for Plaintiffs

26 Broadway

New York, New York 10004

Dated: New York, New York July 13, 1971

## ANSWER OF PERACO CHARTERING CORPORATION 71 CIVIL 3118

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STALCO INTERNATIONAL CORPORATION,
MMI, LTD., and INTERDAMBIO COMERCIAL KATZ
Y ARSARAZ, S.A.,

Plaintiffs,

-against
PERACO CHARTERING CORPORATION, FINANCIAL
ENTERPRISES OF BAHAMAS, LTD., FLANIGAN
and LOVELAND, S.A., HESNES SHIPPING, A/S,

and PER ARNSTEIN ARNEBERG,

Defendant, PERACO CHARTERING CORPORATION, by its attorney, DONALD F. MOONEY, for its Answer to the complaint, alleges upon information and belief, as follows:

## AS TO THE FIRST ALLEGED CAUSE OF ACTION

Defendants.

- Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 1, 2, and 3 of the complaint.
- 2. Admits PERACO CHARTERING CORPORATION has an office and place of business at 17 Battery Place, New York, N. Y. and except as so expressly admitted, denies the other allegations of paragraph 4 of the complaint.
- 3. Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs 5 and 6 of the complaint.
  - 4. Admits that HESNES SHIPPING A/S has an office

Answer of Peraco Chartering Corporation 71 Civil 3118

in Norway and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the other allegations of paragraph 7 of the complaint.

- 5. Admits that PER ARNSTEIN ARNEBERG is President of PERACO CHARTERING CORPORATION which has a place of business at 17 Battery Place, New York, N. Y. and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the other allegations of paragraph 8 of the complaint.
- 6. Denies the allegations of paragraph 9 of the complaint.
- 7. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 10 and 11 of the complaint.
- 8. Admits that Mr. Arneberg, President of PERACO CHARTERING CORPORATION, was contacted by Mr. Goldberg and had discussions about tankers and tanker charters and except as so expressly admitted, denies the allegations of paragraph 12 of the complaint.
- 9. Admits that there came a time when Mr. Arneberg, as President of PERACO CHARTERING CORPORATION, had numerous discussions with Mr. Goldberg concerning a vessel named the M/T "WARWICK FORT" and the possibility of an Israeli charterer chartering such vessel, and except as so expressly admitted, denies the allegations of paragraph 13 of the complaint.

Answer of Peraco Chartering Corporation 71 Civil 3118

- 10. Denies the allegations of paragraphs 14 and 15 of the complaint.
- 11. Admits that Mr. Arneberg, on behalf of PERACO CHARTERING CORPORATION, signed a certain letter dated April 25, 1971 to which letter defendant refers for the contents thereof and except as so expressly admitted, denies the allegations of paragraph 16 of the complaint.
- 12. Denies the allegations of paragraphs 17 and 18 of the complaint.

## AS TO THE SECOND ALLEGED CAUSE OF ACTION

- 13. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 12 above as if fully set forth herein.
- 14. Denies the allegations of paragraphs 20, 21, 22 and 23 of the complaint.

#### AS AND FOR A FIRST SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

- 15. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 14 of this Answer as if fully set forth herein.
- 16. The plaintiffs have failed to state a claim on which relief can be granted.

Answer of Peraco Chartering Corporation 71 Civil 3118

#### AS AND FOR A SECOND SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

- 17. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 14 of this Answer as if fully set forth herein.
- 18. This Court lacks jurisdiction of the subject matter of the complaint.

## AS AND FOR A FIRST COUNTERCLAIM

- 19. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 thru 18.
- 20. Plaintiffs represented to PERACO CHARTERING CORPORATION that it had firm authority to act on behalf of major first-class Israeli charterers, including a company partially owned by the State of Israel, through their alleged associate, Deupty Minister Dinstein, and further represented that charters would be made by their principals for certain fixed rates.
- 21. That said representations were made to the said defendant by plaintiffs in order to induce it to perform services and make expenditures for travel, communication and related expenses in obtaining a tanker vessel.
- 22. The representations made by the plaintiffs were false. Defendant relied on said representations to its damage in the amount of approximately \$75,000.00.

## A 11

Answer of Peraco Chartering Corporation 71 Civil 3118

WHEREFORE, defendant PERACO CHARTERING CORPORATION respectfully prays that the complaint be dismissed and that this defendant have judgment joint and several against the plaintiffs for the amounts demanded in its counterclaim, together with interest and costs.

Dated: New York, N. Y.

February 11, 1972

DONALD F. MOONEY

Attaorney for Defendant, PERACO CHARTERING CORPORATION

17 Battery Place

New York, N.Y. 10004

212-943-1270

ANSWER OF FINANCIAL ENTERPRISES OF BAHAMAS, LTD. 71 CIVIL 3118

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

STALCO INTERNATIONAL CORPORATION,
MMI, LTD., and INTERCAMBIO COMERCIAL KATZ
Y ARSARAZ, S.A.,

INDEX NO.

Plaintiffs,

71-3118

-against-

PERACO CHARTERING CORPORATION, FINANCIAL ENTERPRISES OF BAHAMAS, LTD., FLANIGAN and LOVELAND, S.A., HESNES SHIPPING, A/S, and PER ARNSTEIN ARNEBERG,

ANSWER

Defendants.

Defendant, FINANCIAL ENTERPRISES OF BAHAMAS, LTD., by its attorney, DONALD F. MOONEY, for its Answer to the complaint, alleges upon information and belief, as follows:

## AS TO THE FIRST ALLEGED CAUSE OF ACTION

- 1. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 1, 2 and 3 of the complaint.
- 2. Admits PERACO CHARTERING CORPORATION has an office and place of business at 17 Battery Place, New York, New York and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the other allegations of paragraph 4 of the complaint.

Answer of Financial Enterprises of Bahamas, Ltd. 71 Civil 3118

## AS TO THE SECOND ALLEGED CAUSE OF ACTION

- 11. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 10 above as if fully set forth herein.
- 12. Denies the allegations of paragraphs 20, 21,22 and 23 of the complaint.

#### AS AND FOR A FIRST SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

- 13. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 12 of this Answer as if fully set forth herein.
- 14. The plaintiffs have failed to state a claim on which relief can be granted.

#### AS AND FOR A SECOND SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

- 15. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 14 of this Answer as if fully set forth herein.
- 16. This Court lacks jurisdiction of the subject `matter of the complaint.

## 18

Answer of Financial Enterprises of Bahamas, Ltd. 71 Civil 3118

WHEREFORE, defendant FINANCIAL ENTERPRISES OF BAHAMAS, LTD. respectfully prays that the complaint be dismissed and that the defendant have costs.

Dated: New York, N.Y. December 8, 1971

DONALD F. MOONEY

Attorney for Defendant FINANCIAL ENTERPRISES OF BAHAMAS, LTD.

17 Battery Place

New York, N.Y. 10004

212-943-1270

### Δ 19

#### ANSWER OF HESNES SHIPPING, A/S 71 CIVIL 3118

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

STALCO INTERNATIONAL CORPORATION, MMI, LTD.:

and INTERCAMBIO COMERCIAL KATZ Y ARSARAZ, S.A.,

INDEX NO.

71-3118

- Plaintiffs,

-against-

ANSWER

PERACO CHARTERING CORPORATION, FINANCIAL : ENTERPRISES OF BAHAMAS, LTD., FLANIGAN and LOVELAND, S.A., HESNES SHIPPING, A/S, : and PER ARNSTEIN ARNEBERG,

Defendants.

Defendant, HESNES SHIPPING, A/S, by its attorney, DONALD F. MOONEY, for its Answer to the complaint alleges upon information and belief, as follows:

## AS TO THE FIRST ALLEGED CAUSE OF ACTION

- Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 1, 2 and 3 of the complaint.
- 2. Admits PERACO CHARTERING CORPORATION has an office and place of business at 17 Battery Place. New York, New York and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the other allegations of paragraph 4 of the complaint.
  - 3. Admits FINANCIAL ENTERPRISES OF BAHAMAS, LTD.

has an office and place of business at Nassau, Bahamas and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the other allegations of paragraph 5 of the complaint.

- 4. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 6 of the complaint.
- 5. Admits the allegations of paragraph 7 of the complaint.
- 6. Admits that PER ARNSTEIN ARNEBERG is President of PERACO CHARTERING CORPORATION which has a place of business at 17 Battery Place, New York, New York and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the other allegations of paragraph 8 of the complaint.
- 7. Denies the allegations of paragraph 9 of the complaint.
- 8. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 10, 11, 12, 13, 14 and 15 of the complaint.
- 9. Admits that Mr. Arneberg signed on its behalf a certain letter dated April 25, 1971 to which letter defendant refers for the contents thereof and except as so expressly admitted, denies the allegations of paragraph 16 of the complaint.

Answer of Hesnes Shipping, A/S 71 Civil 3118

10. Denies the allegations of paragraph 17 and 18 of the complaint.

## AS TO THE SECOND ALLEGED CAUSE OF ACTION

- 11. Defendant repeats and realleges each and every
  admission and denial contained in paragraphs 1 through 10
  above as if fully set forth ! erein.
- 12. Denies the allegations of paragraphs 20, 21, 22 and 23 of the complaint.

#### AS AND FOR A FIRST SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

- 13. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 12 of this Answer as if fully set forth herein.
- 14. The plaintiffs have failed to state a claim on which relief can be granted.

#### AS AND FOR A SECOND SEPARATE DEFENST TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

15. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 14 of this Answer as if fully set forth herein.

Answer of Hesnes Shipping, A/S 71 Civil 3118

16. This Court lacks jurisdiction of the subject matter of the complaint.

WHEREFORE, defendant HESNES SHIPPING A/S, respectfully prays that the complaint be dismissed and that the defendant have costs.

Dated: New York, New York December 8, 1971

DONALD F. MOONEY

Attorney for Defendant,

HESNES SHIPPING A/S

17 Battery Place New York, N.Y. 10004

212-943-1270

Δ 23

### ANSWER OF PER ARNSTEIN ARNEBERG 71 CIVIL 3118

UNITED	ST	rA	ES	DIST	RIC	T C	OURT
SOUTHER	N	DI	STR	ICT	OF	NEW	YORK

STALCO INTERNATIONAL CORPORATION,
MMI, LTD. and INTERCAMBIA COMERCIAL KATZ:
Y ARSARAZ, S.A.,

Plaintiffs,

INDEX NO.

-against-

71-3118

PERACO CHARTERING CORPORATION,
FINANCIAL ENTERPRISES OF BAHAMAS, LTD., :
FLANIGAN and LOVELAND, S.A., HESNES
SHIPPING, A/S, and PER ARNSTEIN ARNEBERG, :

ANSWER

Defendants.

Defendant, PER ARNSTEIN ARNEBERG, by his attorney, DONALD F. MOONEY, for his Answer to the complaint alleges upon information and belief, as follows:

## AS TO THE FIRST ALLEGED CAUSE OF ACTION

- 1. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 1, 2 and 3 of the complaint.
- 2. Admits PERACO CHARTERING CORPORATION has an office and place of business at 17 Battery Place, New York, N.Y. and except as so expressly admitted, denies the other allegations of paragraph 4 of the complaint.
- 3. Admits the allegations of paragraph 5 of the complaint.
- 4. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 6 of the complaint.

## A 25

Answer of Per Arnstein Arneberg 71 Civil 3118

- 12. Admits that Mr. Arneberg, on behalf of PERACO CHARTERING CORPORATION, FINANCIAL ENTERPRISES OF BAHAMAS, LTD., and HESNES SHIPPING, A/S, signed a certain letter dated April 25, 1971 to which letter defendant refers for the contents thereof and except as so expressly admitted, denies the allegations of paragraph 16 of the complaint.
- 13. Denies the allegations of paragraph 17 and 18 of the complaint.

## AS TO THE SECOND ALLEGED CAUSE OF ACTION

- 14. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 13 above as if fully set forth herein.
- 15. Denies the allegations of paragraphs 20, 21, 22 and 23 of the complaint.

WHEREFORE, defendant PER ARNSTEIN ARNEBERG, respectfully prays that the compalint be dismissed and that the defendant have costs.

Dated: New York, N.Y. January 26, 1972

DONALD F. MOONEY
Attorney for Defendant,
PER ARNSTEIN ARNEBERG
17 Battery Place

New York, N. Y. 10004

212-943-1270

A 26

#### REPORT OF MAGISTRATE RABY

UNITED STATES DISTRICT COURT SCUTHERN DISTRICT OF NEW YORK

STALCO INTERNATIONAL CORPORATION, MMI LIMITED and INTERCAMBIO COMERCIAL KATZ Y ARSARAZ, S.A.,

71 Civ. 3118

Plaintiffs,

-V-

REPORT OF UNITED STATES MAGISTRATE

PERACO CHARTERING CORPORATION, FINANCIAL ENTERPRISES OF THE BAHAMAS LTD., HESNES SHIPPING, A.S., and PER ARNSTEIN ARNEBERG, :

Defendants.

TO THE HONORABLE MORRIS E. LASKER, U.S.D.J.:

This report relates to a notice of motion by the plaintiffs to drop parties under F.R.C.P. Rule 21, to amend the complaint under F.R.C.P. Rule 15 and to consolidate this action with another action entitled <u>Stalco</u> v. <u>Financial</u>, etc., 72 Civ. 4926. The motion was referred by you to the undersigned Magistrate by order dated January 19, 1973, for review and recommendation, pursuant to 28 U.S.C. Sec. 636 and General Rule 35.

Immediately upon being notified of the referral to me of this motion I advised counsel by letter and scheduled

the matter for hearing on February 13, 1973, directing that the motion, all papers in support of, or in opposition to / should be submitted by that date. Thereafter, at the request of counsel for the defendants, the matter was adjourned until March 12, 1973, and again at the request of counsel for defendants until March 19, 1973. A further adjournment of oral argument was requested by counsel for defendants at that time - a request which I refused in the light of the undue length of time that had elapsed since the referral of that matter by you. Instead I directed that the matter be deemed fully submitted to me not later than March 26th. I mention all this because today, March 27th, I received a further request from counsel for the defendants for additional time within which to file opposing papers, a request which I have of course denied.

The merits of the motion will now be discussed. The motion is obviously based upon the belated recognition by the plaintiff that unless the present lineup of parties can be changed, there is a failure of diversity jurisdiction in

A 28

Report of Magistrate Raby

this case. Specifically, the present lineup of parties is

as follows:

Citizenship for

Name of Party\*

Jurisdictional Purposes

Plaintiffs:

Stalco NMI

Intercambio

New York Israel Mexico

Defendants:

Peraco Financial Enterprises

Hesnes Arneberg New York Bahamas Norway Norway

What the plaintiff proposes to do in this case is to drop Stalco as a plaintiff and to drop defendants Financial Enterprises, Mesnes, and Arneberg. If that were done the action would be an action by MMI and Intercambio, two alien corporations, against Peraco, a New York corporation, which would of course confer diversity jurisdiction on this Court.

plaintiff's counsel points out that this action is based upon joint and several contract liability on the part of all the presently named defendants and that therefore none of the defendants are necessary parties; and that the granting of this relief is therefore completely appropriate

<sup>\*</sup> One of the originally named defendants, Flanigan Loveland S.A., has previously obtained dismissal of the suit against it.

and involves no prejudice to the rights of the defendants who may be dropped.

Plaintiff's counsel also suggests that if the second branch of its motion is granted, namely the consolidation of this action with an action brought by Stales against Financial, Hesnes and Arneberg (the very defendants proposed to be dropped in action #1) all defendants will be before the Court so that there can be a full determination of a controversy which, according to plaintiff, presents common questions of fact and law.

The opposition to this motion consists of a two page affidavit in which the sole objection to the application is that the defendants have expended extensive sums of money on legal fees in both of these actions. I am not impressed with this objection. If action #1 were dismissed on jurisdictional grounds, that dismissal would not be a dismissal on the merits, and the plaintiffs MMI and Intercambio would have a perfect right to reinstitute suit against the defendant Peraco, particularly since the incidents involved took place in 1971 and there is no problem of statute of limitations. In my view the interests of justice are well served by the requested dropping of parties to achieve

the required diversity jurisdiction.

Insofar as the remainder of the motion is concerned namely a request that the complaint be deemed amended to conform to the change in party alignment and that the action
be consolidated with the other pending action involving the
parties proposed to be dropped in this action - I have before
me a representation, unchallenged by defendants, that there
are common questions of law and fact in the two actions.

It is accordingly recommended that the plaintiffs' motion be granted in all respects.

The following papers considered by me on this action are forwarded herewith:

- Plaintiffs' notice of motion filed December 4,
  - 2. Plaintiffs' memo in support of motion.
  - Opposing affidavit filed January 16, 1973.
  - 4. Your referral order dated January 19, 1973.

Dated: New York, N.Y.

March 27, 1973.

Respectfully submitted,

HAROLD J. RABY UNITED STATES MAGISTRATE

### Δ 31

MEMORANDUM DECISION, APRIL 6, 1973, LASKER, D.J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
	-X	*
STALCO INTERNATIONAL CORPORATION, MMI	:	
LIMITED and INTERCAMBIO COMERCIAL KATZ Y ARSARAZ, S.A.,	:	
Plaintiffs,	:	71 Civ. 3110
-v-	•	MEMORANDUM
PERACO CHARTERING CORPORATION, FINANCIAL ENTERPRISES OF THE BAHAMAS LTD., HESNES	:	
SHIPPING, A.S., and PER ARSTEIN ARNEBERG,	:	
Defendants.	:	
	X	

LASKER, D.J.

Plaintiffs' motion to drop parties, to amend the complaint and to consolidate this action with an action entitled Stalco v. Financial, etc., 72 Civ. 4926, having been referred by me to Magistrate Raby for review and recommendation, and Magistrate Raby's report, in which granting of the motion is recommended, having been reviewed and filed by me, the plaintiffs' motion is hereby granted.

Settle order on notice.

Dated: New York, N. Y. April 6, 1976.

> MORRIS E. LASKER U.S.D.J.

### $\Delta = 32$

#### AMENDED COMPLAINT 71 CIVIL 3118

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	X	
MMI LTD., and INTERCAMBIO COMERCIAL KATZ Y ARSARAZ, S.A.,	:	
Plaintif	fs,	71 Civil 3118 AMENDED
-against-		COMPLAINT
PERACO CHARTERING CORPORATION,		
Defendan	t	
tion will the risk the risk the tion the tion will the risk the risk the risk the tion the ti	X	

Plaintiffs, by their attorneys, CICHANOWICZ & CALLAN, complainting of the defendants allege upon information and belief as follows:

#### AS AND FOR A FIRST CAUSE OF ACTION

- 1. Plaintiff MMI, LTD. is a limited company created and existing under the laws of the State of Israel having offices and a place of business at 23 Helsinki Street, Tel-Aviv, Israel.
- 2. Plaintiff INTERCAMBIO COMERCIAL KATZ Y ARSARAZ,

  S.A. is a corporation created and existing under the laws of the

  Republic of Mexico having offices and a place of business in Mexico City, Mexico.
- 3. Defendant PERACO CHARTERING CORPORATION is a New York corporation having offices and a place of business at 17 Battery Place, New York, New York.

## Δ 33

# Amended Complaint 71 Civil 3118

- 4. Jurisdiction is founded upon the diversity of citizenship of the parties and the amount in controversy exceeds \$10,000.00.
- 5. During the latter party of 1970 and for the first five months of 1971 the plaintiffs herein formed an association among themselves and a third corporation, STALCO INTERNATIONAL CORPORATION, for the purpose of locating tanker type vessel which would be available for charter to an Israeli company named TANKER SERVICES, LTD. which would hire and employ the vessel in the carriage of oil for a period mot in excess of ten years.
- 6. The plaintiffs intended, upon locating such a vessel, to act as brokers in the charter transaction between her owner and the charterer, TANKER SERVICES LTD., and to thereby earn a commission on the charter hire.
- 7. The plaintiffs, through Mr. Mordechai Goldberg, an employee of plaintiff STALCO INTERNATIONAL CORPORATION contracted the defendant PER ARNSTEIN ARNEBERG, president of defendant, to learn if he knew of an available tanker.
- 8. Mr. Arneberg stated to Mr. Goldberg that he knew of such a vessel owned by others named the M/T WARWICK FORT and that the vessel would be bought by his interests and associates

#### Amended Complaint 71 Civil 3118

and provided to the Israeli charterer if suitable arrangements were made.

- 9. These arrangements consisted of agreement between the defendant FINANCIAL ENTERPRISES OF THE BAHAMAS, LTD., HESNES SHIPPING A.S. and PER ARNSTEIN ARNEBERG on the one hand and the Israeli charterer on the other, regarding the charter of rental rate for the vessel and the agreement of the prospective charterer to establish a \$5,000,000.00 letter of credit in favor of the owners of the vessel in order to guarantee charter hire payments.
- 10. Mr. Arneberg further stated on behalf of the defendant, himself, FINANCIAL ENTERPRISES OF THE BAHAMAS, LTD. and HESNES SHIPPING, LTD. (both of these latter companies being controlled by Arneberg) that they would effect purchase of the aforesaid vessel and charter her to TANKER SERVICES, LTD. if the matters of charter hire rate and letter of credit were suitably arranged.
- confirmed in writing on April 25, 1971 in Tel-Aviv after weeks of discussions and the precise commissions of the charter hire and a further commission on the purchase price of the vessel payable to the plaintiffs were set out in writing to wit, 1.25 per-

cent of the approximately \$18,500,000.00 purchase price of the M/T WARWICK FORT and 1.25 percent of the charter hire to be earned on the charter party to TANKÉR SERVICES, LTD.

- the greater part of the following month the plaintiffs were successful in obtaining and keeping the agreed charter hire and letter of credit offers of TANKER SERVICES, LTD. open to the defendants and, as a consequence, on May 19, 1971 a charter party and supporting agreements were entered into between TANKER SERVICES, LTD. on the one hand, and the defendants FINANCIAL ENTERPRISES OF THE BAHAMAS, LTD., FLANIGAN AND LOVELAND, S.A. ( a company not party to this suit) and another owning corporation to be named at a later date by the owners.
- 13. Thereafter, the defendant, Arneberg, and his related companies failed to effect purchase of the vessel and deliver her under the charter party as they had agreed and the purchase of the vessel and charter party did not materialize or go into effect due to the defendants' willful breaches of their agreements, all of the plaintiffs' harm and damages in an amount of approximately \$724,098.55, for which the plaintiffs demand judgment.

# AS AND FOR A SECOND AND ALTERNATIVE CAUSE OF ACTION

- 14. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "13" above as if fully set forth hereafter.
- sentations that it would effect purchase of the M/T WARWICK FORT and charter her to TANKER SERVICES, LTD. for a period not in excess of ten years, expended large sums of money in travel, communications, entertainment and miscellaneous expenses in their efforts to secure the acceptable charter hire and letter of credit offers from TANKER SERVICES, LTD.
- aforesaid would cause and induce plaintiffs to expend the monies referred to in paragraph "18" and further knew that these monies were being expended and continued to encourage plaintiffs to incur expenses in their efforts to secure the aforesaid offers.
- 17. Defendant, from the outset, knew that it did not have a firm commitment for the vessel, nor even a general understanding with her owners for her purchase and did not purchase

#### Amended Complaint 71 Civil 3118

her as they had agreed when the above charter hire and letter of credit offers were given.

18. Defendant knew that if this true state of facts were known to the plaintiffs they would not have expended monies as aforesaid and so defendant willfully concealed the true facts from plaintiffs and willfully represented false facts and inducements to plaintiffs, all to the plaintiffs harm and damage in an amount of \$60,032.56, for which the plaintiffs demand judgment.

WHEREFORE, the plaintiffs respectfully pray that they have judgment against the defendant for the amounts demanded herein with interest thereon and costs and that the court grant such other relief as may be proper.

CICHANOWICZ & CALLAN Attorneys for Plaintil

By:

A Member of the Fin

80 Broad Street

New York, New York 10004

Dated: New York, New York November /7, 1972

# A 38 COMPLAINT 72 CIVIL 4926

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

STALCO INTERNATIONAL COPPORATION,

Plaintiff,

. 71-ctvil-2.13-

-against-

FIMANCIAL ENTERPRISES OF THE BAHAMAS, LTD., HESNES SHIPPING, S.A. and PER ARNSTEIN ARNEBERG,

Defendants.

COMPLAINT

3 15

Plaintiff, by its attorneys, CICHANOWICZ & CALLAN, complaining of the defendants allege upon information and belief as follows:

#### AS AND FOR A FIRST CAUSE OF ACTION

- 1. Plaintiff STALCO INTERNATIONAL CORPORATION is a corporation created and existing under the laws of the State of California having a place of business at 110 East 59th Street, New York, New York.
- 2. Defendant FINANCIAL ENTERPRISES OF THE BAHAMAS, LTD. is a limited company created and existing under the laws of the Bahama Islands, having offices and a place of business at Nassau, Bahamas.
  - 3. Defendant HESNES SHIPPING, A.S. is a corporation

created and existing under the laws of the courtry of Norway having its office in that country.

- 4. Defendant PER ARNSTEIN ARNEBERG, a Norwegian national, is the president of PERACO CHARTERING CORPORATION and resides in the State of New York.
- 5. Jurisdiction is predicated upon diversity of citizenship of the parties and the amount in controversy exceeds \$10,000.00.
- 6. During the latter part of 1970 and for the first five months of 1971 the plaintiff formed an association with MMI LTD., an Israeli corporation and INTERCAMBIO COMERCIAL KATZ Y ARSARAZ, S.A., a Mexican corporation, for the purpose of locating a tanker type vessel which would be available for charter to an Israeli company named TANKER SERVICES, LTD. which would hire and employ the vessel in the carriage of oil for a period not in excess of terryears.
- 7. The plaintiff intended, upon locating such a vessel, to act as a broker in the charter transaction between her owner and the charterer, TANKER SERVICES, LTD., and to thereby earn a commission on the charter hire.
  - 8. The plaintiff, through Mr. Mordechai Goldberg,

# A 40 Complaint 72 Civil 4926

an employee, contacted the defendant PER ARNSTEIN ARNEBERG to learn if he knew of an available tanker.

- 9. Mr. Arneberg stated to Mr. Goldberg that he knew of such a vessel owned by others named the M/T WARWICK FORT and that the vessel would be bought by his interests and associates and provided to the Israeli charterer if suitable arrangements were made.
- tween the defendants and PERACO CHARTERING CORPORATION, on the one hand, and the Israeli charterer, on the other, regarding the charter or rental rate for the vessel and the agreement of the prospective charterer to establish a \$5,000,000.00 letter of credit in favor of the owners of the vessel in order to guarantee charter hire payments.
- 11. Defendant Arneberg further stated on behalf of all the defendants and PERACO CHARTERING CORPORATION that they would effect purchase of the aforesaid vessel and charter her to TANKER SERVICES, LTD. if the matters of charter hire rate and letter of credit were suitably arranged.
- on April 25, 1971 in Tel-Aviv after weeks of discussions and the precise commissions on the charter hire and a further commiss-

ion on the purchase price of the vessel payable to the plaintiff were set out in writing to wit, 1.25 percent of the approximately \$18,500,000.00 purchase price of the M/T WARWICK FORT and 1.25 percent of the charter hire to be earned on the charter party to TANKER SERVICES, LTD.

- the greater part of the following month the plaintiff was successful in obtaining and keeping the agreed charter hire and letter
  of credit offers of TANKER SERVICES, LTD. epen to the defendants
  and, as a consquence on May 19, 1971 a charter party and supporting agreements were entered into between TANKER SERVICES, LTD. on
  the one hand, and the defendants FINANCIAL ENTERPRISES OF THE
  BAHAMAS, LTD., FLANIGAN AND LOVELAND, S.A. (a company not party
  to this suit) and another owning corporation to be named at a
  later date by the owners.
- 14. Thereafter, the defendants and PERACO CHARTERING CORPORATION failed to purchase the vessel and deliver her under the charter party as they had agreed and the purchase of the vessel and charter party did not materialize or go into effect due to the defendants' willful breaches of their agreements, all of the plaintiff's harm and damage in an amount of approximately \$724,098.55, for which the plaintiffs demand judgment.

#### AS AND FOR A SECOND AND ALTERN-ATIVE CAUSE OF ACTION

- 15. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "14" above as if fully set forth hereafter.
- ations that they, defendants, would purchase the M/T WARWICK FORT and charter her to TANKER SERVICES, LTD. for a period not in excess of ten years, expended large sums of money in travel, communications, entertainment and miscellaneous expenses in their efforts to secure the acceptable charter hire and letter of credit offers from TANKER SERVICES, LTD.
- aforesaid would cause and induce plaintiff to expend the monies referred to in paragraph "18" and further knew that these monies were being expended and continued to encourage plaintiff to incur expenses in its efforts to secure the aforesaid offers.
- 18. Defendants, from the outset, knew that they did not have a firm commitment for the vessel, nor even a general understanding with her owners for her purchase and did not purchase her as they had agreed when the above charter hire and letter of credit offers were given.

#### Complaint 72 Civil 4926

19. Defendants knew that if this true state of fact were known to the plaintiff they would not have expended monies as aforesaid and so defendants willfully concealed the true facts from plaintiff and willfully represented false facts and inducements to plaintiff, all to plaintiff's harm and damage in an amount of \$26,684.28 for which the plaintiff demands judgment.

WHEREFORE, the plaintiff respectfully prays that it have judgment, joint and several, against the defendants for the amounts demanded herein with interest thereon and costs and that the court grant such other relief as may be proper.

Dated: New York, New York November 17, 1972

CICHANOWICZ & CALLAN

3v:

Attorneys for Plaintiff

80 Broad Street

New York, New York 10004



### Δ 44

#### ANSWER TO AMENDED COMPLAINT 71 CIVIL 3118

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	x
MMI LTD. and INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ S.A.,	:
Plaintiffs,	71 Civ. 3118
-against-	. ANSWER TO AMENDED
PERACO CHARTERING CORPORATION,	COMPLAINT
Defendant.	
	: x

Defendant, PERACO CHARTERING CORPORATION, by its attorney DONALD F. MOONEY, for its amended answer to the amended complaint, alleges upon information and belief, as follows:

# AS TO THE FIRST ALLEGED CAUSE OF ACTION

- Denies knowledge or information sufficient to form
  a belief as to the allegations in paragraphs 1 and 2 of the amended
  complaint.
  - 2. Admits the allegations of paragraph 3.
- 3. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph 4.
- 4. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 5 and 6 of the amended complaint.

- 5. Admits that the President of PERACO CHARTERING CORPORATION was contacted by Mr. Goldberg and had discussions about tankers and tanker charters, and except as so admitted, denies the allegations in paragraph 7 of the amended complaint.
- 6. Admits that there came a time when the President of PERACO CHARTERING CORPORATION had numerous discussions with Mr. Goldberg concerning a vessel named the M/T WARWICK FORT and the possibility of an Israeli charterer chartering such vessel, and except as so expressly admitted, denies the allegations of paragraph 8 of the complaint.
- 7. Denies the allegations in paragraphs 9 and 10 of the amended complaint.
- 8. Admits that Mr. Arneberg on behalf of PERACO CHARTERING CORPORATION, signed a certain letter dated April 25, 1971, to which letter defendant refers for the contents and except as so expressly admitted, denies the allegations of paragraph 11 of the amended complaint.
- Denies the allegations in paragraphs 12 and
   of the amended complaint.

#### AS TO THE SECOND ALLEGED CAUSE OF ACTION

10. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 9 above as if set forth herein.

Answer to Amended Complaint 71 Civil 3118

11. Denies the allegations of paragraphs 15 through 18.

AS AND FOR A FIRST SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

- 12. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 11 of this Answer as if fully set forth herein.
- 13. The plaintiffs have failed to state a claim on which relief can be granted.

AS AND FOR A SECOND SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION

- 14. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 11 of this Answer as if fully set forth herein.
- 15. This Court lacks jurisdiction of the subject matter of the complaint.

#### AS AND FOR A FIRST COUNTERCLAIM

- 16. Defendant repeats and realleges each and every admission and denial contained in paragraphs 1 through 11.
- 17. Plaintiffs represented to PERACO CHARTERING CORPORATION that it had firm authority to act on behalf of major first-class Israeli charterers, including a company partially

Answer to Amended Complaint 71 Civil 3118

owned by the State of Israel, through their alleged associate, Deputy Minister Dinstein, and further represented that charters would be made by their principals for certain fixed rates.

- 18. That said representations were made to the said defendant by plaintiffs in order to induce it to perform services and make expenditures for travel, communication and related expenses in obtaining a tanker vessel.
- 19. The representations made by the plaintiffs were false. Defendant relied on said representations to its damage in the amount of approximately \$75,000.00.

wherefore, defendant PERACO CHARTERING CORPORATION respectfully prays that the complaint be dismissed and that this defendant have judgment joint and several against the plaintiffs for the amounts demanded in its counterclaim, together with interest and costs.

Dated: New York, New York

DONALD F. MOONEY

Attorney for Defendant

PERACO CHARTERING CORPORATION

17 Battery Place

New York, New York 10004

(212) 943-1270

Δ 48

#### ANSWER OF DEFENDANTS 72 CIVIL 4926

UNITED	ST	'AT	ES	DI	ST	RIC	T	CO	URT
SOUTHER	IN	DI	STR	IC	T	OF	NE	W	YORK

STALCO INTERNATIONAL CORPORATION,

Plaintiff.

\_\_\_\_X

against

INDEX NO.

72 Civ. 4926

FINANCIAL ENTERPRISES OF BAHAMAS, LTD., HESNES SHIPPING, A/S and PER ARNSTEIN ARNEBERG,

ANSWER

Defendants.

Defendants FINANCIAL ENTERPRISES OF BAHAMAS, LTD.,
HESNES SHIPPING, A/S, and PER ARNSTEIN ARNEBERG, by their
attorney, DONALD F. MOONEY, for their Answer to the complaint,
allege upon information and belief, as follows:

# AS TO THE FIRST ALLEGED CAUSE OF ACTION

- Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 1 of the complaint.
- Admit the allegations of paragraphs 2, 3
   and 4 of the complaint.
- Deny the allegations of paragraph 5 of the complaint.
- 4. Deny knowledge or information sufficient to form a belief as to the allegations in paragraphs 6 and 7 of the complaint.

49 Answer of Defendants 72 Civil 4926 5. Admit that Mr. Arneberg was contacted as President of PERACO CHARTERING CORPORATION by Mr. Goldberg and had discussions about tankers and tanker charters and except as expressly admitted deny the allegations of paragraph 8 of the complaint. 6. Admit that there came a time when Mr. Arneberg, as President of PERACO CHARTERING CORPORATION, had numerous discussions with Mr. Goldberg concerning a vessel named the M/T WARWICK FORT and the possibility of an Israeli charterer chartering such vessel, and except as so expressly admitted, deny the allegations of paragraph 9 of the complaint. 7. Deny the allegations of paragraphs 10 and ll of the complaint. 8. Admit that Mr. Arneberg, on behalf of PERACO CHARTERING CORPORATION, FINANCIAL ENTERPRISES OF BAHAMAS, LTD. and HESNES SHIPPING, A/S, signed a certain letter dated April 25, 1971 to which letter defendant refers for the contents and except as so expressly admitted, deny the allegations of paragraph 12 of the complaint. 9. Deny the allegations of paragraphs 13 and 14 of the complaint. AS TO THE SECOND ALLEGED CAUSE OF ACTION 10. Defendants repeat and reallege each and

50 Answer of Defendants 72 Civil 4926 every admission and denial contained in paragraphs 1 through 9 above as if fully set forth herein. 11. Deny the allegations of paragraphs 16 through 19 of the complaint. AS AND FOR A FIRST SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION 12. Defendants repeat and reallege each and every admission and denial contained in paragraphs 1 through ll of this Answer as if fully set forth herein. 13. The plaintiff has failed to state a claim on which relief can be granted. AS AND FOR A SECOND SEPARATE DEFENSE TO THE ALLEGED FIRST AND SECOND CAUSE OF ACTION 14. Defendants repeat and reallege each and every admission and denial contained in paragraphs 1 through ll of this Answer as if fully set forth herein. 15. This Court lacks jurisdiction of the subject matter of the complaint. AS AND FOR A FIRST COUNTERCLAIM 16. Defendants repeat and reallege each and every admission and denial contained in paragraphs 1 through 11. 17. Plaintiff represented to representatives

#### Answer of Defendants 72 Civil 4926

of defendants that it had firm authority to act on behalf of major first-class Israeli charterers, including a company partially owned by the State of Israel, through their alleged associate, Deputy Minister Dinstein, and further represented that charters would be made by their principals for certain fixed rates.

- 18. That said representations were made to the said defendants by plaintiff in order to induce it to perform services and make expenditures for travel, communication and related expenses in obtaining a tanker vessel.
- 19. The representations made by the plaintiff were false. Defendants relied on said representations to their damage in the amount of approximately \$75,000.00.

WHEREFORE, defendants respectfully pray that the complaint be dismissed and that defendants have judgment against the plaintiff for the amounts demanded in their counterclaim, together with interest and costs.

Dated: New York, N. Y.

DONALD F. MOONEY

Attorney for Defendants

17 Battery Place

New York, N.Y. 10004

212-943-1270

Δ 52

NOTICE OF MOTION 72 CIVIL 4926

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

-against-

STALCO INTERNATIONAL CORPORATION, :

Plaintiff,

.

72 Civ. 4926 (Lesker, J.)

FINANCIAL ENTERPRISES OF THE :
BAHAMAS LTD., HESNES SHIPPING
A.S., and PER ARNSTEIN ARNESEERO, :

NOTICE OF MOTION

Defendants

SIRS:

PLEASE TAKE NOTICE, that upon the element affidavit of DOUALD B. ALLEN, sworn to July 29, 1.74, the undersigned will move this Court in Roca 2903, United States Courthouse, Poley Square, Borough of Manhattan, City and State of New York on the 12th day of August, 1974 at 10:00 A.M., or as soon as counsel can be heard for an order: (1) pursuant to Rule 37 of the Pederal Rules of Civil Procedure to strike defendant's answer for failure to answer interrogatories, and (2) pursuant to Rule 42 of the Pederal Rules of Civil Procedure to consolidate this cause with a similar action now pending in this Court, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: New York, N.Y.

Yours, etc., CICHANCHICZ & CALLAN

TO: DONALD P. MOONSY, Esq. Attornays for Defendants 17 Esttery Flace New York, N.Y. 10704 A Manage of the First Attorneys for Plaintiff 8) Troad St. New York, T.T. 19904 AFFIDAVIT OF DONALD B. ALLEN IN SUPPORT OF MOTION 71 CIVIL 4926

UNITED STATES DISTRICT OF	T CCURT NEW YORK		
		X	
STALCO INTERNATIONAL	CORPORATION,	•	
1	Plaintiff,	•	72 Ctv. 1226
-against-			72 Civ. 4926 (Lasker, 5.)
FINANCIAL ENTERPRISES OF THE			AFFIDAVIT
A.S., and PER ARESTE	M ARIESBERG,	:	
	Defendants	•	
g		X	
STATE OF HEN YORK	)		
COUNTY OF NEW YORK	: ss.: )		

DONALD B. ALLEY, being duly sworm, deposes and a lys:

I am a member of the firm of CICHARWICZ & CALLAY, and
em familiar with most of the pleadings and proceedings heretofore
had in this action.

## The Motion to Strike the Answer

on June 4, 1974, plaintiff served a set of seven interrogatories upon the defendant. No objection was ever made to any of the interrogatories, nor has there been granted any extension of time for answering. Your deponent's request for these answers has not produced the desired result, and it is respectfully submitted that this Court should order the answer atricken unless full and complete answer to the interrogatories are served within 10 days after entry of an order to that effect.

### Consolidation

This suit originally had more defendants. Diversity problems arose and to cure that, a separate action was commenced so that by a new combination of the original parties there were two suits to neet the jurisdictional requirements. The other suit is entitled:

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MMI LTD. and INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ S.A.,

Plaintiff,

-against-

PERACO CHARTERING CORPORATION,

Defendant

Docket - 71 Civ. 3118 (Owen, J.)

Your deponent cannot give a complete account of what transpired before, as he was not with plaintiff's office at that time, and the attorney then in charge is no longer with the firm. The file indicates that a motion for consolidation was previously made, but our search of the court records does not indicate that it was ever acted upon. Enclosed herewith is a copy of Magistrate Raby's report to Your Honor in the companion case which recommends consolidation of the two actions, and we understand there is no opposition from desendants.

# A 55 Affidavit of Donald B. Allen

WHEREFORE, deponent prays for an order directing prompt ensuers to interrogatories, and for an order direction consolidation.

Dan B. Ben

Sworn to before me this 29th day of July, 1974.

Notal Public, State
110. 41-2593425
Dividied in Quaera County
Commission Expires Nation 30, 1271

ENCLOSURE--REPORT OF MAGISTRATE RABY ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

Identical to Report of Magistrate Raby printed herein at pages A26 to A30.

AFFIDAVIT OF DONALD F. MOONEY IN OPPOSITION TO MOTION 72 CIVIL 4926

UNITED STATES DISTRI SOUTHERN DISTRICT OF			
		x	
STALCO INTERNATIONAL	CORPORATION,	:	72 Civ. 4926
	Plaintiff,	:	(Lasker, J.)
-against	-		AFFIDAVIT
FINANCIAL ENTERPRISE			ALLIDAVII
BAHAMAS LTD., HESNES A.S., and PER ARNSTE	S SHIPPING SIN ARNESBERG,	•	
	Defendants	•	
		:	
		^	
STATE OF NEW YORK	) : ss.:		
COUNTY OF NEW YORK	)	•	

DONALD F. MOONEY, being duly sworn, deposes and says:

- 1. I am attorney for the defendants and I make this affidavit in response to plaintiff's motion to consolidate and to strike the defendant's answer for failure to answer interrogatories.
- 2. Defendants have no objection to the motion to consolidate but object vehemently to the attempt to strike defendant's answer or to complain about a failure to answer interrogatories.
- 3. This action was commenced by plaintiffs in July 1971 and there were extensive discovery proceedings by both parties in 1971 and 1972. Plaintiff took a deposition of a

# A 57

#### Affidavit of Donald F. Mooney

foreign witness in January 1974 and more recently has arranged for taking testimony by written interrogatories. As Mr. Allen in his affidavit in support of the motion admits there have been numerous changes of attorneys handling this matter in the office of the plaintiff's attorneys. The present attorney handling the matter, like his predecessor, has sought additional discovery. The interrogatories were served in June but the witnesses familiar with the subject matter of these interrogatories have been out of the country on shipping business. I also have been out of town on a vacation in July. I expect that answers to the interrogatories can be submitted within the next thirty days but I do not think it appropriate to issue an order striking defendant's answer. Defendants have been available continually for extensive examinations before trial, production of documents, etc. over a period of three years and it is understandable that there may be some delay during the summer period in responding to the interrogatories. We respectfully ask that the plaintiff's motion to strike the answer be denied.

Sworn to before me this day of August, 1974.

1 1/1/190

VITO SINO, Notary Public
State of New York - No. 43-3689435
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 30, 1975

# NOTICE OF MOTION FOR LEAVE TO AMEND 71 CIVIL 3118

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	Con leave
STALCO INTERNATIONAL COMPORATION, Plaintiff,	The A will
-against-	72 civ. 4926
FIRANCIAL ENTERPRISES OF THE EAHAMAS LTD., et al., Defendants.	
	NOTICE OF MOTION
MMI LTD., et al., Plaintiffs	
-agsinst-	: 71 Civ. 3113 (Owen, J.)
PERACO CHARTERING CORFORATION,	1
Defendant	:
	· <b>X</b>

#### SIRS:

Donald B. Allen, sworn to February 4, 1975, the undereigned will move this Court pursuant to Rule 15 of the Federal Rules of Civil Procedure to amend the complaint as indicated herein, at the United States Courthouse, Room 518, Foley Equare, Porough of Munhattan, City and State of New York, on the 21st day of February 1975 at 2:15 o'clock in the afternoon, or as soon thereafter as counsel can be heard.

Dated: New York, New York February 4, 1975 Yours etc., CICHATCHICZ & CALLAN

TO: DOWALD F. MOONTY, Isq.
Attorney for Defendants
17 Dettemy Place
New York, N.Y. 10004

A Minber of the dra Attorneys for Plaintiffs 30 Broad ft. New York, N.Y. 19004

## A 59

AFFIDAVIT OF DONALD B. ALLEN IN SUPPORT OF MOTION FOR LEAVE TO AMEND 71 CIVIL 3118

UNITED STATES DISTRICT COURT			
SOUTHERN DISTRICT OF NEW YORK			
	-X		
STALCO INTERNATIONAL CORPORATION,	:		
Plaintiff,			
-against-	:		72 C1v. 4926
PINANCIAL ENTERPRISES OF THE	:		
EMMANIAS LTD., et al.,	:		
Pefendants	:		AFFIDAVIT
	·-»		MIT. AVI.
MMI LTD., at al.,	:		
Plaintiffs	:		
-against-	:		71 Civ. 3113 (Owen, J.)
PENACO CHARTETING COMPORATION,	:		(onen, or)
Defendant			
	- <b>-</b> X		
STATE OF NEW YORK ) : se.:		•	

I am a member of the firm of CICHAROWICZ & CHIAN, attorneys for plaintiffs herein, and have fimiliarized tyself with all the pleadings and proceedings heretofore had in this action. This is a notion to make a minor element to the complaint, an ame ident to which defense counsel has refund his accessed. Trial preparations are being conducted under the negis of Magintrate Cahrether, who directed that this motion be made

## Affidavit of Donald B. Allen

when defense counsel stated that he intended to make a crossaction to dismiss the complaint on other grands.

by plaintiffs as a result of defendants' failure to honor its contractual commitments, wherein defendants agreed to provide a vessel and plaintiffs agreed to obtain a long-term charter for the vessel from an Israeli corporation. The second cause of action seeks recovery for time and money expended in this same venture because of defendants' misrepresentations. The second cause of action action is not involved in this motion.

all plaintiffs in the consolidated suits seek the same relief because they joined forces and acted in concert (as the Hami Group) to perform their part of the agreement. Defendants in both of the consolidated actions were all controlled by the same interests and together, they represented the other half of the contract.

The original action (71 Civ. 3118) was filed in July, 1971. Thereafter, it was discovered that all parties could not be joined in one civil suit under Federal jurisdiction. To overcome this technical flaw, the original action was amended in November, 1972, so as to eliminate certain plaintiffs and defendants; these same parties were then picked up in a new action (72 Civ. 4926). Thus, the consolidated causes are nothing more than a division of the original action into two parts. The basic allegations remain the same. For the convenience of the Court, a copy of the complaint in 71 Civ. 3118 (as previously exerted)

# A 61 Affidavit of Donald B. Allen

is annexed hereto as Exhibit A, and a copy of the complaint in 72 Civ. 4925 is annexed hereto as Exhibit B.

Your deponds t took charge of this case in March, 1974; the attorney who had previously been handling this case is no longer with your deponent's firm. However, a review of the file indicates that defense counsel has carefully examined a principal of each of the plaintiff's, and that he has always been fully exame of the basis of these actions.

The present motion became necessary when defense counsel argued before Magistrate Schreiber that (from a narrow interpretation of the complaint) plaintiffs had restricted their cause of action to one specific written document, the primary purpose of which was actually to prove the agreed commissions. Any misunderstanding or claim of surprise can be eliminated by a simple modification of Paragraph 11 of 71 Civ. 3118, and a similar modification of Paragraph 12 of 72 Civ. 4926. Annexed hereto as Ehhibits C and D are photocopies of these same paragraphs, showing the simple changes which are now requested.

WHEREFORE, deponent prays for an order permitting amendment of the complaints as indicated in Exhibits C and D.

Sworn to before me this 4th day of February, 1975.

Donoid B. John

WATTA A. AT DIE York To Story To Story Published To Story To Story

## A 62

EXHIBIT A--AMENDED COMPLAINT IN 71 CIVIL 3118 ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

Identical to Complaint 71 Civil 3118 printed herein at pages A32 to A37.

EXHIBIT B--COMPLAINT IN 72 CIVIL 4926 ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

Identical to Complaint 72 Civil 4926 printed herein at pages A38 to A43.

63 EXHIBIT C--PROPOSED AMENDMENT TO COMPLAINT IN 71 CIVIL 3118 ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN lish a \$5,000,000.00 letter of credit in favor of the owners of the vessel in order to guarantee charter hire payments. 10. Mr. Arneberg further stated on behalf of the defendant, himself, FINANCIAL ENTERPRISES OF THE BAHAMAS, LTD. and HESNES SHIPPING, LTD. (both of these latter companies being controlled by Arneberg) that they would effect purchase of the aforesaid vessel and charter her to TANKER SERVICES, LTD. if the matters of charter hire rate and letter of credit were suitably arranged. 11. This agreement between the parties harato was confirmed in writing on April-25; -1971-in-Tel-Aviv-After weeks of discussions, and the precise commissions/8f the charter hire and a further commission on the purchase price of the vessel payone half on April 25,1971 able to the plaintiffs were set out in writing to wit / 1.25-jetof one percent /eent of the approximately \$18,500,000.00 purchase price of the M/T WARWICK FORT and 1.25 percent of the charter hire to be earned on the charter party to TANKER SERVICES, LTD. 12. From this date of April 25, 1971 and throughout the greater part of the following month the plaintiffs were successful in obtaining and keeping the agreed charter hire and letter of credit offers of TANKER SERVICES, LTD. open to the defendants and, as a consequence, on May 19, 1971 a charter party and supporting agreements were entered into between TANKER SER-VICES, LTD. on the one hand, and the defendants FIRANCIAL ENTER-PRISES OF THE BAHAMAS, LTD., FLANIGAN AND LOVELAND, S.A. ( a company not party to this suit) and another owning corporation -3-

# EXHIBIT D--PROPOSED AMENDMENT TO COMPLAINT IN 72 CIVIL 4926 ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

- 10. These arrangements consisted of agreement between the defendants and PERACO CHARTERING CORPORATION, on the one hand, and the Israeli charterer, on the other, regarding the charter or rental rate for the vessel and the agreement of the prospective charterer to establish a \$5,000,000.00 letter of credit in favor of the owners of the vessel in order to guarantee charter hire payments.
- 11. Defendant Arneberg further stated on behalf of all the defendants and PERACO CHARTERING CORPORATION that they would effect purchase of the aforesaid vessel and charter her to TANKER SERVICES, LTD. if the matters of charter hire rate and letter of credit were suitably arranged.
- on April 25, 1971 in Tal Ariv. After weeks of discussions and the precise commissions on the charter hire and a further commission on the purchase price of the vessel payable to the plaintiff on April 25, 1971 one half of one were set out in writing/to wit/1.25 percent of the approximately \$18,500,000.00 purchase price of the M/T WARWICK FORT and 1.25 percent of the charter hire to be earned on the charter party to TANKER SERVICES, LTD.
- 13. From this date of April 25, 1971 and throughout the greater part of the following month the plaintiff was successful in obtaining and keeping the agreed charter hire and letter of credit offers of TANKER SERVICES, LTD. open to the defendants and, as a consquence on May 19, 1971 a charter party and supporting agreements were entered into between TANKER SERVICES, LTD. on

A 65

AFFIDAVIT OF DONALD F. MOONEY IN OPPOSITION TO MOTION FOR LEAVE TO AMEND 71 CIVIL 3118

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
STALCO INTERNATIONAL CORPORATION, :	
Plaintiff,	
-against-	
FINANCIAL ENTERPRISES OF THE BAHAMAS LTD., HESNES SHIPPING, A.S. and PER ARNSTEIN : ARNEBERG,	LEAVE TO AMEND
Defendants.	
x	
MMI LTD. and INTERCAMBIO COMMERCIAL : KATZ Y ARSARAZ S.A.,	
Plaintiffs,	
-against-	
PERACO CHARTERING CORPORATION,	
Defendant.	
x	
STATE OF NEW YORK ) : ss.: COUNTY OF NEW YORK )	

DONALD F. MOONEY, being duly sworn, deposes and says:

- 1. I am attorney for defendants in both actions herein and am admitted to practice before the District Court for the Southern District of New York. I am familiar with all the pleadings and proceedings heretofore had in this action.
- 2. This affidavit is made in opposition to plaintiffs' motion to amend the complaint. Mr. Allen in his affidavit in support of the motion suggests that it is a "minor amendment"

which he tried to incorporate in the Pre-Trial Order and that Magistrate Schreiber directed him to make the motion "when" I stated that I intended to make a cross motion to dismiss. This is not correct. After I explained to Magistrate Schreiber that the amendment was not "minor" and that almost four years had passed, Magistrate Schreiber asked Mr. Allen for an explanation of such delay and then directed him to make a motion to amend.

3. Plaintiffs commenced their action on July 13, 1971. Promptly thereafter, on August 25, 1971, on behalf of defendants we served notices to examine each of the three plaintiffs. The examinations were conducted on October 13, November 24 and December 13, 1971. Your deponent and defendants devoted much time and effort in preparation for the depositions and in the discovery and production of documents.\*

The focal point of investigations and discovery was the written agreement dated April 25, 1971 copy of which is enclosed as Exhibit A.

4. In 1972, plaintiffs realized that there was a lack of complete diversity and attempted some procedural legerdemain to create the impression that diversity exists.

This involved the amendment of the original complaint, the \*The deposition of an Israeli witness was taken in New York on January 17, 1974; interrogatories and cross-interrogatories were addressed to another witness by the U.S. Consul in Tel Aviv in July 1974; there have been extensive interrogatories and requests for admissions.

filing of a separate action in this Court and the consolidation of the actions. But as plaintiffs' attorney states in his affidavity, "all plaintiffs in the consolidated suits seek the same relief because they joined forces and acted in concert ..." Thus, all plaintiffs are indispensable parties, yet they are not properly joined. Of course, plaintiffs were joined in the original complaint and are joined in an action brought by the same plaintiffs, presently pending before the New York State Supreme Court, County of New York, which alleges the same claims against defendants. A copy of the Supreme Court complaint is annexed as Exhibit B. Examination of paragraph 14 of such complaint shows it also alleged a written agreement.

- 5. Plaintiff has thus filed three complaints, commenced two actions in New York Supreme Court (which were subsequently merged), and amended one Federal complaint during the three and one-half years of these several proceedings.
- 6. On December 2, 1973, Hayman Shamir, the representative of MMI LTD., died. Mr. Shamir had given his deposition upon oral questions at a time when the focus of the complaint was on the writing of April 25, 1971. Defendants do not now have the opportunity to discover from MMI LTD. any facts pertaining to the alleged oral agreements which are propounded as the basis of relief in the amended complaint. Mr. Shamir was the most qualified representative of MMI LTD. to illuminate the facts.
- 7. Plaintiffs' attorney personally took over the case in March, 1974. His firm has been handling the case contin-

uously for the last four years. He has had ample time to review the soundness of plaintiffs' complaint. Yet he did not seek to amend the complaint until after he obtained Admissions, exchanged documents with us, etc. and submitted to defense counsel a proposed Pre-Trial Order which sought to amend the pleadings to conform to the issues in the Pre-Trial Order. At this point, plaintiffs' counsel attempted to trade a document thought to be in his possession for defendants' consent to the amendment. Defendants believe this document to have substantial relevance and may show one or more of the plaintiffs are not the real parties in interest and may have engaged in commercial bribery. Plaintiffs' counsel despite agreement to produce such document at the pretrial conference has not produced it. Copies of letters dated January 17 and 27th, calling for the production of such documents are annexed as Exhibit C and D. This bargaining on the eve of trial combined with defendants' enduring reliance on the allegations of the original complaints caught your deponent by surprise. For in effect, the amendment expands the bases of relief from the April 25, 1971 writing to all discussions between the parties which might possibly suggest agreement. The plaintiffs were examined specifically on the specific allegations of the complaint and not on prior agreements or oral agreements. Practically speaking, the amendment would permit circumvention of Statute of Frauds the the Parol Evidence Rule by plaintiffs in attempting to prove their case

#### Affidavit of Donald F. Mooney

which appears to continue to focus on the April 25, 1971 writing. Contrary to the statement by Mr. Allen in his affidavit, Magistrate Schreiber directed him to move for leave to amend when the Magistrate realized the true scope and dimension of the amendment.

- 8. Mr. Allen's affidavit suggests that defense counsel's misunderstanding is the reason that this amendment is necessary. In fact, if the amendment is necessary at all, it is because the complaints as they are presently structured, are inadequate for Mr. Allen's purposes.
- 9. Permitting the amendment would work considerable prejudice on defendants. In one way or another, they have been defending two or more identical actions for more than three and one-half years. They have invested much time, effort and expense in tending to these allegations which seriously affect their standing in the shipping industry and general business community. Plaintiffs have unduly delayed in making this amendment. Magistrate Schreiber directed that it be made to this Court shortly after Mr. Allen suggested it. Thus, it was Magistrate Schreiber's decision that the motion had to be made, but the timing was solely Mr. Allen's.

The scope of the amendment draws into the fray oral negotiations among the parties. Clearly, these negotiations are within the Statute of Frauds. The alleged Agreement was not to be performed within one year. A claim for brokerage fees arising

# 70

## Affidavit of Donald F. Mooney

out of oral agreements is unenforceable, also by virtue of the Statute of Frauds.

WHEREFORE, defendants respectfully request that the motion for leave to amend be denied.

15/ Danger F. Mooney

Sworn to before me this 17th day of February, 1975

Notary Public, State of New York No. 60-4523397

Qualified in Westchester County Commission Expires March 30, 1976

### A 71

# EXHIBIT A--LETTER DATED APRIL 25, 1971 ANNEXED TO AFFIDAVIT OF DONALD F. MOONEY

רחוב הלפינקי בג, ווליוובים שלפונים לשי 25, 40 25 י מברקים: ממיגרום י טלקנ 424 תלאביב מאביב א HELSINKI ST TFL-AVIV. ISRAEL - TEL 260404, 254903 - CAULLE MELLICHOUT - TELEX 1 424 T.V.

April 25, 1971

Mr. Per A. Arneberg Hilton Hotel Tel Aviv Israel.

Subject: Time Charter M/T - Warwick Fort.

Dear Mr. Arneberg:

Enclosed please find the firm offer from Tanker Services Ltd. for the above vessel addressed to us, ref. 737/71, dated April 25, 1971.

You may make use of this firm offer in order to conclude and sign the Time Charter contract for this vessel under the terms specified in the above referenced firm offer.

Further to point (5) of this offer, it is our understanding that a revolving irrevocable Letter of Credit will be issued by an Israeli bank to cover the monthly payments due during the life of the charter.

It is agreed that you will cause us to be paid at least one half of one percent of the total sa price (of approximately \$18,500,000) of this vessel, and 1.25 perce of the gross charter income therefrom.

It is needless to stress the extreme importance of your rapidly concluding this charter party. You are well aware of the extreme expense, effort and personal involvement of my colleagues and myself which have resulted in our finally obtaining this firm counter offer from Tanker Services valid for the period you have requested.

You must also take note of the fact that you have already presented firm offers to Tanker Services for this vessel.

A HA

## Exhibit A Annexed to Affidavit of Donald F. Mooney

I would further emphasize that in our conversation with Mr. A. Mayron in your presence be made it clear that the only reason for his maintaining an average rate in excess of \$4.00 today despite the declining freight market is because our negotiations have commenced some weeks ago. Should he restart negotiations today he would offer considerably less in view of the above.

Consequently, we feel that your good name and ours depend on your performance in delivering this vessel and concluding the charter party within the time limits specified.

M. D. Katz

for I. C. Katz Y Arsaraz S. A.

Very truly yours

H. Shamir for M. M. I. Ltd.

I fully agree to all the above

Per Arnstein Arneberg

For Peraco Chartering Corp. of New York Financial Enterprises of Bahamas, Ltd. of Nassau and Messrs. Hesnes Shipping A/S, Oslo. A 73

Exhibit A Annexed to Affidavit of Donald F. Mooney

## TANKER SERVICES LIMITED



MARINE MANAGETS FOR

"PAZ" OIL CO. LTD.
"DELEK" THE ISRAEL FUEL CORP. LTD.
SONOL HISRAELI LTD.
PETROLEUM TRANSPORT & TRADING CORP. N. Y.
HAIFA REFINISIES LTD.
UNITED PETROLEUM EXPORT CO. LTD.
FUEL OIL TRADING CO. LTD.

Tel Aviv, 25th April, 1971 No. 737/71

Mr. D. Katz,
Intercambio Comercial Katz Y Arsaraz S.A.
c/o Memi-Group,
TEL AVIV.

Dear Mr. Katz,

re: M/T "WARWICK FORT"
83,000 tonner

Further our several discussions regarding the above mentioned tanker, we offer firm as follows:

- 1) Rate: 5 years at \$4.75, plus 5 years at \$3.30.
- 2) Delivery: Persian Gulf at a port to be nominated by charterers.
- 3) Date of Delivery: 1/9/71 to 30/9/71 with cancellation date 15/10/71 charterers option.
- 4) Charter Party: Shelltime No. 3.
- 5) Subject details Charter Party to be mutually agreed.

This offer is valid until Thursday 29/4/71 12.00 hrs. our time.

Yours faithfully, TANKER SERVICES LIMITED

AMY 20

# EXHIBIT B--SUMMONS AND COMPLAINT IN NEW YORK SUPREME COURT ANNEXED TO AFFIDAVIT OF DONALD F. MOONEY

present comes are sign some some special special .

County of NEW YORK

STALCO INTERNATIONAL CORPORATION, MMI, LTD and INTERCAMBIO COMERCIAL KATZ Y ARSARATZ,

PlaintiffS

against

PERACO CHARTERING CORPORATION, FINANCIAL ENTERPRISES OF THE BAHAMAS LTD., HESNES SHIPPING, A.S. and PER ARNSTEIN ARNEBERG,

Defendants

Index No.

Plaintiff designates NEW YORK

County as the place of trial

The basis of the venue is Place of business of defendants

Summans

Plaintiffs resides at (see annexed complaint)

County of

To the above named Defendant

Int are herein similation to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, August 24, 1972

Defendant's address: 17 Battery Place

New York, New York

CICHANOWICZ & CALLAN
Attorney(s) for Plaintiff

Post Office Address
80 Broad Street
New York, New York 10004
344-7042

Exhibit B Annexed to Affidavit of Donald F. Mooney

COUNTY OF BUN YORK		
STATES HATCHWISHAL CORPORATION, 1211 LTD.,	8	
AND MITTERCATORS COMMERCIAL KATZ Y ARGARUZ, S.A.		
	8	
Plaintiffs,		
-ogainst-	S.	
		COMPLANT
THE ACO CHARTERED CONFORMED, PROMOTE ENTER-	1	
PRESES OF PARMING, LED., MICHES SHIPPING, A.S.		
nad per arustem armederg,	ı	
Defendants.	1	
	-x	

Plaintiffs, by their attorneys, CICHANONICE & CALLEY, complaining of the defendants allege upon information and belief as follows:

#### AS AND FOR A PIRST CAUSE OF ACRICH

- 1. Plaintiff STALCO INTERNATIONAL CORPORATION is a corporation created and existing under the laws of the State of California having a place of business at 110 East 59th Street New York, New York.
- 2. Plaintiff IPII, LTD. is a limited company created and existing under the laws of the State of Israel having offices and a place of business at 23 Helsinki Street, Tel-Aviv, Israel.
- 3. Plaintiff INTERCRUBIO COMMERCIAL KATZ Y AMSARMS, G.A. is a corporation created and emisting under the laws of the Re-

Exhibit B Annexed to Affidavit of Donald F. Mooney

public of Mexico having offices and a place of business in Mexico City, Mexico.

- 4. Defendant PERACO CHARTERING CORPORATION is a New York corporation having offices and a place of business at 17 Dattery Place, New York, New York.
- 5. Defendant FINALCIAL ENTERPRISES OF BAHAMAS, LTD. is a limited company created and emisting under the laws of the Dahama Islands, having offices and a place of business at Hassau, Dahamas.
- 6. Defendant MISHIS SHIPPING, A.S. is a corporation created and existing under the laws of the country of Norway having its offices in that country.
- 7. Defendant PER ARUSTEIN ARMEDERG is the president of PERACO CHARTERING CORPONATION and resides in the State of New York.
- 8. During the latter part of 1970 and for the first five months of 1971 the plaintiffs herein formed an association among themselves for the purpose of locating an oil carrying or tanker type vessel which would be available for charter or rental to an Israeli company named TANKER SHRVICES, LTD. which would hire and

A 77

Exhibit B Annexed to Affidavit of Donald F. Mooney

employ the vessel in the curriage of oil for a period not in excess of ten years.

- 9. The plaintiffs intended, upon locating such a vessel, to act as a broker in the charter transaction between her owner and the charterer, TALMER SERVICES MID., and to thereby earn a commission on the charter hire.
- 10. The plaintiffs, through Mr. Hordochai Coldberg, an employee of plaintiff STALCO INTERMITICIAL contacted the defendant PER ARMSTEIN ARMSBERG to learn if he knew of an available tanker.
- ll. Mr. Armeberg stated to Mr. Goldberg that he knew of such a vessel owned by other individuals named the M/T "WAR-WICK FORT" and that the vessel could be bought by his interests and associates and provided to the Israeli charterer if suitable arrangements were made.
- 12. These arrangements consisted of agreement between the defendants herein and the Israeli charterer regarding the charter or rental rate for the vessel and the agreement of the prospective charterer to establish a \$5,000,000.00 letter of credit in favor of the owners of the vessel in order to guarantee charter hire payments.

Exhibit B Annexed to Affidavit of Donald F. Mooney

- 13. Defendant Armeberg further stated on behalf of all the defendants herein that they would purchase the aforesaid vescal and charter her to TANKER SERVICES, LTD. if the matters of charter hire rate and letter of credit were suitably arranged.
- on April 25, 1971 in Tel-Aviv after wocks of discussions and the precise commissions on the charter hire and the purchase price of the vessel payable to the plaintiffs were set out in writing to wit, 1.25% of the approximately \$18,500,000.00 purchase price of the M/T "WARWICK FORT" and 1.25% of the charter hire to be earned on the charter party to TANKER SERVICES, LTD.
- 15. From this date of April 25, 1971 and throughout the greater part of the following month the plaintiffs were successful in obtaining and keeping the agreed charter hire and letter of credit offers of TALKER SERVICES, LTD. open to the defendants and, as a consequence on May 19, 1971 a charter party and supporting agreements were entered into between TANKER SERVICES, LTD. on the one hand, and the defendants FINANCIAL ENTERPRISES OF EAH-AMAS, LTD., FLANIGAN AND LOVELAND, S.A. (a company not party to this suit) and another owning corporation to be named at a later date by the owners.

Δ 79

Exhibit B Annexed to Affidavit of Donald F. Mooney

16. Thereafter, the defendants failed to purchase the vessel and deliver her under the charter party as they had agreed and the purchase of the vessel and charter party did not materialize or go into effect due to the defendants' willful breaches of their agreements, all of the plaintiffs' harm and damage in an amount of approximately \$724,098.55, for which the plaintiffs demand judgment.

AS AND FOR A SECOND AND ALTERNATIVE CAUSE OF ACT-ION

- 17. Plaintiffs repeat and reallege each and every allcgation contained in paragraphs "1" through "16" above as if
  fully set forth hereafter.
- 18. Plaintiffs in reliance upon defendants representations that they, defendants, would purchase the M/T "WARWICK FORT" and charter her to TANKER SERVICES, LTD. for a period not in excess of ten years, expended large sums of money in travel, communications, entertainment and miscellaneous expenses in their efforts to secure the acceptable charter hire and letter of credit offers from TANKER SERVICES, LTD.
- 19. Defendants knew that their representations as aformsold would cause and induce plaintiffs to expend the monies referred to in paragraph "18" and further knew that these monies

80 Exhibit B Annexed to Affidavit of Donald F. Mooney were being expended and continued to encourage plaintiffs to incur expenses in their efforts to secure the aforesaid offers. 20. Defendants, from the outset, knew that they did not have a firm commitment for the vessel, nor even a general understanding with her owners for her purchase and did not purchase her as they had agreed when the above charter hire and letter of credit offers were given. Defendants knew that if this true state of fact were known to the plaintiffs they would not have expended monies as aforesaid and so defendants willfully concealed the true facts from plaintiffs and willfully represented false facts and inducements to plaintiffs, all to the plaintiffs harm and damage in an amount of \$100,000.00, for which the plaintiffs demand judgment.

WHEREFORE, the plaintiffs rospectfully pray that they have judgment, joint and several, against the defendants for the amounts demanded herein with interest thereon and costs and that the Court grant such other relief as may be proper.

CICHMOWICZ & CALLY

Attorneys for Plaintiffs

80 Broad Street

New York, New York 10004

Dated: New York, New York , 1972 August

# Centleron:

We refer to our letter of January 9, 1975, specifying documents referred to in the examination before trial of the plaintiff. Such comments were the subject of discussion at your office on the afternoon of January 9. We had pointed out that your office had agreed to produce most of these documents. You indicated that you would have to review the list and check on what was agreed to be produced, but otherwise "if obtainable with reasonable effort, we'll produce them." We have reviewed the documents received last Wednesday, January 15, on which you have made notations referring to the identity of the documents in accordance with our letter of January 9, and we find that you have not produced the following documents:

#### Mil - Shawir

p. 6-7 - written agreement between MMI Ltd. and Ratz (and Levy?), also referred to on pp. 40 and 49. (This document pertains to paragraph 10 of the complaint, and at p. 49 of the transcript, lines 10 and 11, it was specifically agreed that it would be produced.)

Cichanovicz & Callan

- 2 -

January 17, 1975

P. 9-10 - telex communications introducing Goldberg re.
time charter possibilities. (The witness stated
that he had these documents in his file and in
his testimony indicated that the papers in his
file had been turned over to your office.)

p. 55-6 telex showing increase in rate. (Your office specifically agreed to specify the documents and furnish copies of them. The following colloquy demonstrates that fact:

MR. MOONEY: May we leave a space in the deposition and, Mr. McHamara, could you please precisely identify the supporting agreements referred to in paragraph 17 of the Complaint?

MR. MC NAMARA: Yes.

Do you want them only identified, Mr. Mooney, or do you want copies of them?

MR. MOONEY: I want copies of them.

MR. MC NAMARA: Okay, fine.

It may be that these documents are already among the exhibits, and, if so, copies need not be furnished, but the documents should be specified with sufficient particularity for clear identification.)

#### INTERCAMBIO - Katz

- p. 6-8 Commission Agreement involving Levy. (This agreement may be the same agreement referred to by Mr. Shamir and referred to above at pp. 6 and 7 of his examination. At p. 8, line 19, your office specifically agreed "We will produce that agreement; that letter." Your office indicated familiarity with this agreement and undoubtedly it is in your files.)
- p. 11 file of Mr. Katz.

83 Exhibit C Annexed to Affidavit of Donald F. Mooney January 17, 1975 - 3 -Cichanowicz & Callan 41-42 - copy of telex concerning bank financing. (Your office stated that this document was in your files.) P. 64-65 - Agraement along plaintiffs. (This letter may be the same Commission Agreement identified by both Pr. Shamir and Mr. Matz, and, if so, please advise. Otherwise, please furnish us with a copy. Fr. Goldberg swore that he turned over all his files to your office. Tr. 14). With respect to our request concerning the depositions, you state in your letter of January 14 that you do not have extra copies, but will furnish us with photostatic copies at our expense. Provever, the question that we raised in our letter of January 9, was whether you had the original Intercarbio deposition, signed by Mr. Latz. We have an unsigned copy. Your records will reflect that on November 23, we forwarded the original and a copy to you and asked that you arrange to have Mr. Fatz execute the original and return it to us. Also, it is our recollection that you agreed to furnish un with a copy of the Parnett deposition and according to our records you received the corrected transcript on May 13, 1974. Please check year records on this and if you did not so scree, furnish us with a copy of "r. Carnett's deposition at our expense. Very truly yours, Donald P. Mooney Deranjb

EXHIBIT D--LETTER DATED JANUARY 27, 1975 ANNEXED TO AFFIDAVIT OF DONALD F. MOONEY

January 27, 1975

Cichanowicz & Callan 80 Broad Street New York, New York

Attention: Donald B. Allen, Esq.

Re: STALCO INTERNATIONAL CORP. et al.

PERACO CHARTERING CORP. et al. Your File 7972 DBA Our File C-190

Dear Sir:

We refer to your letter of January 24th. We enclose copy of Exhibit 1 identified in the Shamir deposition as requested by you.

We cannot accept your refusal to provide us with copies of the specific documents identified at the deposition of Mr. Shamir and also at the deposition of Er. Katz as detailed in our letter of January 17th. They are not poorly identified documents and your firm specifically agreed to produce them. We reminded Mr. McNamara on several occasions. After he left your firm we gave similar reminders to Mr. Gordon Walker, who like yourself, explained that he was not familiar with the whole file, but would review it and furnish the requested documents. After he left your firm, you also pointed out that you had just taken over the case and needed time to familiarize yourself with the extensive files and depositions. We think it bold of you to suggest that the documents "should have been obtained from Nr. McNarara." In our practice when an attorney agrees to produce a document (particularly one that is indicated to be in the attorney's files) we expect ultimately to receive such documents in readiness for Pre-Trial Conference and Pre-Trial Order. We were being considerate to your firm's problems in having three different attorneys taking over this case, and do not intend our considerateness to be used against our client's rights. Indeed your reluctance to produce the documents, and the poor excuses given for the lack of production, suggest to us that the documents are prejudicial to your client's case.

We also disagree with your suggestion that your "inability to locate these documents is not prejudicial, since you are

-2-

relying on other specified documents. We are not interested in what documents you are relying on but rather examining documents which you may not choose to use, but which may be prejudicial to your case.

We think you will agree that you have a duty to produce the documents without further delay.

Very truly yours,

DONALD F. MOONEY

DFM:sn Enc. REPLY AFFIDAVIT OF DONALD B. ALLEN IN SUPPORT OF MOTION FOR LEAVE TO AMEND

UNITED STATES DISTRICT COURT SCUTHERN DISTRICT OF NEW YORK	ORIGINAL FILED
STALCO INTERNATIONAL CORPORATION, :	succe with
Plaintiff, :	Sold to the second seco
-against-	72 civ. 4926
PLYANCIAL ENTERPRIES OF THE PAHAMAS LTD., MESNES SHIPPING, A.S. and PER ARMSTEIN ARTEBERG,	
Defendants. :	
X	
MMI LTD. and INTERDAMBIC COMERCIAL: KATZ Y ARSARAD S. A.,	
Plaintiffs,	
-against-	71 Civ. 3118 (Swen, J.)
PERACO CHARTTRING CORPORATION,  Defendent	RUPLY APPIDAVIT IN SUPPORT OF MOTION TO
STATE OF NEW YORK )  COUNTY OF NEW YORK )	ANTID THE COMPLAINTS

DONALD D. ALLEN, being duly sworm, deposes and says:

I am a member of the firm of Cichanowicz & Callan, attorneys for plaintiffs herein. I have read the answering affidevit of Donald F. Mooney submitted in opposition to plaintiffs' motion to smend the complaint, and make this reply.

It has been many, many years since we lest heard an comerienced trial attorney claim that he has been misled by

#### Reply Affidavit of Donald B. Allen

technicalities of pleading have long been de-emphasized in favor of dealing with a case on its merits. The broad rules covering discovery and inspection were particularly designed to enable each party to know what the other was seeking. Defendants have had full advantage of these Rules.

This motion comes about because defendant apparently hoped to spring up at trial with an affirmative defense which he carefully failed to plead. His emposure came to light when Negletrate Schreiber directed that, in view of the usual issues and the minerous exhibits and depositions, a pre-trial order should be filed.

Pursuant to the Magistrate's directive, we drafted a pre-trial order and sent it to plaintiff's counsel on January 2, 1975. It contained the standard statement found in the printed form prescribed for this District, which says in Paragraph 1:

"The pleadings were egreed to be decided amended in accordance with the framing of the issues in this action in maragraph "8" of this pre-trial order."

Plaintiff's counsel made no objection thereto until a proposed counter order was served over three walks later, and just before a further conference with the Magistrate.

When plaintiffs' counsel continued to insist upon his personal interpretation of the pleadings, we proposed the simple ameriment which is the subject of this motion. The Magistrate indicated that the emendment would be allowed, with defendants being given as much additional time as necessary if this required

#### Reply Affidavit of Donald B. Allen

additional discovery and impaction. However, when defense counsel else indicated that he planned to nove to dismiss the conclaint, Magistrate Schreiber recognized it as tantamount to a motion for summary judgment, and directed that motions be made to the Court.

Further laboring of what occurred at the hearing seems unnecessary, since we are confident that Magistrate Schreiber will recall what happened, and he can be consulted if necessary. Noither should we waste time on the allegation that we were attempting to trade off certain documents for the privilege of amending. The only matter of importance is that by the time we had the last peeting with Magistrate Schreiber, all papers, documents, transcripts, etc., had been exchanged, except for two writings, believed to be in Israel, which we agreed to produce if they still exist. Our agreement to produce was made unconditional, and we will refrain from adding to the Court's burden by attaching our letters, which are referred to in Mr. Hooney's Exhibits C and D

Throughout the course of pre-trial discovery, all parties have been aware that the contract on which this agreement is based arose from the course of dealing of the several parties thereto, various oral agreements, telex massages, letters, and several moranda, including one dated April 25, 1971. A review of any deposition conducted by defendants clearly illustrate this point.

Desendents make much of the point that Mr. Haymin Shamir whose testimony was taken by the defendants in 1971, is now dead, and complain that they will now be unable to examine him with

respect to other accests of the agreement since their examination at that time focused solely on the April 25 memorandum regarding commissions. A review of Mr. Shanin's testimony, however, clearly shows that not only did Mr. Mooney examine Mr. Shanin on every accest of this entire transaction, but, in fact, asked no question with respect to this corrission agreement of April 25,1971 until rage 50 of the deposition. The total examination with respect to the April 25 letter filled only pages 50-51 and part of pages 66 and 67 of the transcript of the deposition. (Acopy of the deposition will be handed up on the argument). The references at pages 23, 24 and 26 to a firm offer dated April 25, 1971, are references to a wholly different document than the commission agreement of April 25, 1971. (Copies of both documents are attached to the Mooney affidavit as Exhibit A).

action and all agreements between the parties repeats itself throughout the entire pre-trial discovery carried out by defendants. They have clearly known the basis of the plaintiffs' claim throughout these proceedings and have conducted their discovery accordingly.

counsel is correct in easying that there is a companion suit which was filed in New York Supreme Court. It was obviously served for insurance purposes in case there should be a jurisdictional defect in the District Court. The entire Supreme Court proceeding has lain dorment from its inception, and has no bearing on this motion.

As for defendants' Statute of Franks argument, it is clear that a brokerage contract with respect to a charter party need not be in writing. (See our memorandum of law in support of motion). In any event, plaintiffs are not suing as brokers, but as co-joint adventurers of the defendants, and a joint adventure agreement need not be in writing.

Def indants! last argument is that amendment should not be allowed because each of the consolidated cases are not properly before the Court due to lack of indispensable parties; i.e., the plaintiffs named in the double caption. The argument is without nerit. This point has already been determined for purposes of this case by Magistrate Raby's recommendation of March 27, 1973, subsequently adopted by Judge Lasker on April 6, 1973. Copies of the recommendations and of the memorandum opinion of Judge Lasker are attached as Exhibits 1 and 2. The opinion grants plaintiffs' motion to drop certain parties from the original action, to file a new cuit with respect to the parties so dropped, and then consolidate both cases. In support of that motion, plaintiffs stated that no one was an indispensable party to the action. This contention was unopposed by the defendants, and was adopted by Magistrate Raby and Judge Lasker at that time. The decision, therefore, should be considered the law of the case, and defendants should not be allowed a last-minute change of position on a point already reviewed by the Court.

## A 91

Reply Affidavit of Donald B. Allen

WHEREFORE, deponent prays that the motion to amend the complaint be granted.

Donald B. Aller.

Sworn to before me this 14th day of March, 1975.

N- CATTICH

13 4516515

C - Bronz County

C mission Espires Morch 30, 197

EXHIBIT 1--REPORT OF MAGISTRATE RABY ANNEXED TO REPLY AFFIDAVIT OF DONALD B. ALLEN

Identical to Report of Magistrate Raby printed herein at pages A26 to A30.

EXHIBIT 2--MEMORANDUM DECISION, LASKER, D.J. ANNEXED TO REPLY AFFIDAVIT OF DONALD B. ALLEN

Identical to Memorandum Decision, Lasker, D.J. printed herein at page A31.

#### Δ 92

#### NOTICE OF CROSS-MOTION TO DISMISS

STALCO INTERNATIONAL CORPORATION,	:	
Plaintiff,	:	
-against-	:	72 Civ. 4926
FINANCIAL ENTERPRISES OF THE BAHAMAS	:	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
LTD., HESNES SHIPPING, A.S. and PER ARNSTEIN ARNEBERG,	:	
Defendants.	:	
	x	
MMI LTD. and INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ S.A.,	:	
Plaintiffs,	:	71 Civ. 3118
-against-		NOTICE OF CROSS-
PERACO CHARTERING CORPORATION,		MOTION TO DISMISS
Defendant.		

PLEASE TAKE NOTICE that upon the annexed affidavit of PER A. ARNEBERG, sworn to February 18, 1975, the undersigned will move this Court pursuant to Rule 56(b) of the Federal Rules of Civil Procedure to:

- (a) dismiss the complaint in 71 Civ. 3118 for failure to state a claim upon which relief can be granted in that the conditions on which the alleged agreement was predicated did not occur;
  - (b) dismiss the complaint in action 72 Civ. 4926

93 Notice of Cross-Motion to Dismiss for failure to state a claim upon which relief can be granted, in that STALCO INTERNATIONAL CORPORATION is not a real party in interest, and, in the alternative,

(c) dismiss the complaint in action 72 Civ. 4926 as to defendant Per Arnstein Arneberg for failure to state a claim upon which relief can be granted on the ground that he did not participate in the transtransactions as an individual and

(d) dismiss the complaints in both actions for failure to join indispensible parties as required by Rule 19;

at the United States Courthouse, Room 518, Foley Square, Borough of Manhattan, City and State of New York, on the 21st day of February, 1975 at 2:15 o'clock in the afternoon, or as soon thereafter as counsel can be heard.

New York, New York Dated: February 18, 1975

DONALD F.

Attorney for Defendants Office & P. O. Address 17 Battery Place

New York, New York 10004

(212) 943-1270

TO:

CICHANOWICZ AND CALLAN Attorneys for Plaintiffs 80 Broad Street New York, New York 10004

## DEFENDANTS' STATEMENT OF FACTS PURSUANT TO GENERAL RULE 9(g)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
	-x	
STALCO INTERNATIONAL CORPORATION,	:	
Plaintiff,	:	
-against-	:	72 Civ. 4926
FINANCIAL ENTERPRISES OF THE BAHAMAS LTD., HESNES SHIPPING, A.S. and PER	:	•
ARNSTEIN ARNEBERG,	:	
Defendants.	:	
	-x	
MMI LTD. and INTERCAMBIO COMMERCIAL KATZ Y ARSAPAZ S.A.,	:	
Plaintiffs,	: ;	71 Civ. 3118
	:	
-against-		STATEMENT OF FACTS PURSUANT TO GENERAL
PERACO CHARTERING CORPORATION,		RULE 9(g)
Defendant.	•	
	: x	

- 1. Mr. Arneberg at no time acted for himself individually as a principal in any of the dealings with plaintiffs.
- None of the defendants purchased the M/T WARWICK
   FORT.
- 3. None of the plaintiffs were involved in the negotiations for the purchase of the WARWICK FORT.
  - 4. The conditions which were requisite to the purchase

Defendants' Statement of Facts Pursuant to General Rule 9(g)

of the WARWICK FORT were not fulfilled and the executory charterparty was not finalized. No hire was earned under the charterparty.

- 5. STALCO INTERNATIONAL CORPORATION is not a signatory to nor is it mentioned in the April 25, 1971 writing.
- 6. Plaintiffs admit that STALCO INTERNATIONAL CORPORA-TION, MMI LTD. and INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ S.A. formed an association known as MEMI Group. Whatever obligations run from any defendant run to all three plaintiffs as alleged joint obligees.
- 7. The same facts and issues are before the Supreme Court of New York County in an action commenced by the three plaintiffs in these two actions against the same defendants.

DONALD F. MOONEY

Attorney for Defendants

17 Battery Place

New York, New York 10004

(212) 943-1270

A 96

# AFFIDAVIT OF PER A. ARNEBERG IN SUPPORT OF CROSS-MOTION TO DISMISS

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	-x
STALCO INTERNATIONAL CORPORATION,	
Plaintiff,	: 72 Civ. 4926
-against- FINANCIAL ENTERPRISES OF THE BAHAMAS	•
LTD., HESNES SHIPPING, A.S. and PER ARNSTEING ARNEBERG,	:
Defendants.	
	x
MMI LTD. and INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ S.A.,	71 Civ. 3118
Plaintiffs,	: AFFIDAVIT IN SUPPORT
-against- PERACO CHARTERING CORPORATION,	OF CROSS MOTION
Defendant.	: :×
STATE OF NEW YORK ) : SS.: COUNTY OF NEW YORK )	

- I, PER A. ARNEBERG, being duly sworn, depose and say:
- 1. I am a defendant in 72 Civ. 4926. I have personal knowledge of all of the facts involved in these actions. I am President of Peraco Chartering Corp., which has offices at 17 Battery Place, New York, New York.
- The complaint relies on a writing dated April 25,
   1971 as the manifestation of the agreement allegedly breached

# A 97 Affidavit of Per A. Arneberg (a copy of the letter is attached hereto as Exhibit "A"). 3. The letter is signed by representatives of PAPSARAZ (plaintiff in 71 Civ. 3118) MMI LTD. (plaintiff

3. The letter is signed by representatives of I.C. KATZ Z APSARAZ (plaintiff in 71 Civ. 3118) MMI LTD. (plaintiff in 71 Civ. 3118) and by the representative of PERACO CHARTERING CORPORATION (defendant in 71 Civ. 3118), FINANCIAL ENTERPRISES OF THE

BAHAMAS LTD. (defendant in 72 Civ. 4926) and HESNES SHIPPING, A.S.

(defendant in 72 Civ. 4926). Neither STALCO nor I were parties

to the agreement, nor did we manifestly have any interest therein.

- 4. The letter anticipated that PEPACO, FINANCIAL and HESNES would endeavor to purchase a vessel which would be chartered to TANKER SERVICES, LTD.
- 5. A ten-year charterparty was negotiated with TANKER SERVICES, LTD. but because the matters of a letter of credit, financing and purchase of a vessel could not be concluded within time limitations, the charterparty was not finalized.
- 6. Exhibit "A" clearly sets forth that commissions would be paid on the "gross charter income." There was never any "charter income." Plaintiffs' complaints do not allege otherwise.
- 7. Although the letter refers to a commission on the purchase price of the vessel, none of the plaintiffs in either action were involved in the efforts of PERACO, FINANCIAL and HESNES to purchase a vessel. The prospective buyers used their

own resources to search the ship market for a vessel. Plaintiffs' complaints do not allege otherwise.

- 8. There is no justification for any plaintiff to claim a commission for a purchase with which it was not involved and which never took place. None is alleged in the first count of any complaint.
- 9. At no time during the negotiations did your deponent act on his own behalf, individually as a principal, but, at all times, as is evident in Exhibit "A", as a representative of certain defendants, and my capacity was known to plaintiffs.
- 10. In plaintiffs' Memorandum in Support of its Motion to Drop Parties and Consolidate the two actions, they characterize the action as the MEMI Group v. the Arneberg group. While your deponent is clearly not a principal in these proceedings, the notion that these two cases inextricably involve the corporate plaintiffs is correct. In effect, they have no separate interests with respect to this litigation.
- 11. The sum total of all of the allegations in all of the complaints makes apparent that STALCO, MMI LTD. and INTER-CAMBIO purport to be joint venturers seeking to collect commissions mutually earned. Plaintiffs have wrongfully bifurcated a unitary action to the prejudice of the defendants and the Federal Rules by not aligning themselves as joint claimants.

#### Affidavit of Per A. Arneberg

12. The very same claim is presently before the New York Supreme Court, New York County, with the very same alignment of parties as there was in the original 71 Civ. 3118 (a copy of the complaint is attached hereto as Exhibit "B"). That action is, while duplicating this consolidated proceeding, continuing on independently.

Sworn to and subscribed before me this 18th day of February, 1975.

Natery Proc. , Yesti No Common County County

Platery I to County
County to County

## A 100

EXHIBIT A--LETTER DATED APRIL 25, 1971 ANNEXED FO AFFIDAVIT OF PER A. ARNEBERG

Identical to Letter Dated April 25, 1971 annexed to Affidavit of Donald F. Mooney printed herein at pages A71 to A73.

EXHIBIT B--COMPLAINT IN NEW YORK SUPREME COURT ANNEXED TO AFFIDAVIT OF PER A. ARNEBERG

Identical to Complaint in New York Supreme Court annexed to Affidavit of Donald F. Mooney printed herein at pages A74 to A80.

PLAINTIFFS' STATEMENT OF FACTS PURSUANT TO GENERAL RULE 9(g)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		Milled HEE
STALCO INTERNATIONAL CORPORATION,		W3 37 19E
Plaintiff,	:	
-against-	:	72 Civ. 4926
FINANCIAL ENTERPRISED OF THE BAHAMAS LTD., HESNES SHIPPING, A.S., and PER ARNSTEIN ARMEBERG,	:	STAT MENT OF TRIABLE ISSUES OF FACT PURSUANT TO GENERAL RULE 9(g) and
Defendants	X	AFFIDAVIT IN OPPOSITION TO CROSS-MOTION TO DISMISS
MMI LTD. and INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ S.A.	:	
Plaintiffs,	:	71 Civ. 3118 ( Cwen, J. )
-against-	:	
PERACO CHARTERING CORPORATION,	:	
Defendants	X	

# STATEMENT OF TRIABLE ISSUES OF FACT PURSUANT TO GENERAL RULE 9(g)

- 1. There was a contract between plaintiffs and defendents, under which plaintiffs agreed to secure a charterer and defendants agreed to secure a ship to perform under said charter, with all commissions on the charter and sale of any ship to be divided between plaintiffs and defendants.
- 2. The defendants breached the agreement by failing to produce a vessel.

Plaintiffs' Statement of Facts Pursuant to General Rule 9(g)

- 3. Plaintiffs suffered damages in the amount of \$585,343.55 in lost commissions due to this breach of contract by the defendants.
- 4. Mr. Armeberg, in his own behalf, as well as agent for the other named defendants in these actions, falsely stated that he could secure a vessel to perform the charter party secured by plaintiffs, and plaintiffs relied on his statements to their detriment.
- 5. Plaintiffs suffered damages in the amount of \$86,717.24 directly expended in reliance on this false statement.
- 6. Paragraphs 1, 2, 4 and 6 in defendants' Statement of Fact are denied.

CICHANOWICZ & CALLAN

By Donald B. Aller.

A Member of the Firm Attorneys for Plaintiffs 80 Broad Street New York, N.Y. 10004

## AFFIDAVIT OF DONALD B. ALLEN IN OPPOSITION TO CROSS-MOTION TO DISMISS

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
~	-X
ETALCO INTERNATIONAL CORPORATION,	•
Plaintiff,	
-against-	: 72 Civ. 4926
FINANCIAL ENTERPRISES OF THE	1
BAHAMAS LTD., HESNES SHIPPING, A.S. and PER ARMSTEIN AFNEBERG,	
Defendants	1
	<b>x</b>
MAI LTD. and INTERCAMBIO COMERCIAL KATZ Y ARASARAZ S. A.,  Plaintiffs,  -against-  PERACO CHARTERING CORPORATION,  Defendant	71 Civ. 3113 (Caen, J.) AFFIDAVIT IN OPPOSITION TO CROSS-MOTION TO DISMISS  :
STATE OF NEW YORK ) COUNTY OF NEW YORK )	

DONALD B. ALLEN, being duly sworm, deposes and says:

I am a member of the firm of Cichanowicz & Callan,

attermeys for plaintiffs herein, and have familiarized myself

with all the pleadings and proceedings heretofore had in this

ection. I make this affidavit in answer to defendants, motion

to dismiss the complaint.

The facts of this case are set forth in the affidavit

Affidavit of Donald B. Allen

of Mordecai Goldberg, sworn to March 11, 1975, and armexed hereto.

This affidavit addresses itself only to defendants' allegation that all the plaintiffs herein are joint obligees and therefore, necessary parties to each action; and that each action should therefore be dismissed for failure to join necessary party plaintiffs, namely the plaintiffs in the other action.

This argument is without merit. The point has already been determined for purposes of this case by Magistrate Raby's recommendation of March 27, 1973, subsequently adopted by Judge Lasker on April 6, 1973. Copies of the recommendation and of the memorandum opinion of Judge Lasker are attached as Exhibits 1 and 2 to my reply affidavit in support of the motion to amend the complaint herein. The opinion grants plaintiffs' motion to drop certain parties of remathe original action, to file a new suit with respect to the parties so dropped, and thus consolidate both cases.

K

In support of that motion, plaintiffs claimed that no one party was an indispensable party to the action. This contention was unopposed by the derendants, and was adopted by Magistrate Raby and Judge Lasker at that time. The decision, therefore, should be considered the law of the case, and defendants should not be allowed a last minute change of position on a point already reviewed by the Court.

# A 105 Affidavit of Donald B. Allen

WHEREFORE, deponent prays that the cross-motion to dismiss the complaint be denied.

Dreatt B. J. Ver

Sworn to before me this day of March, 1975.

Noisy Put in Crists of the York Post Noisy Put in Crists of the York Post No 116595

P. No 116595

P. Ousliffes in Fronk County

Thinking Explose March 30, 1974

AFFIDAVIT OF MORDECHAI GOLDBERG IN OPPOSITION TO CROSS-MOTION TO DISMISS

SOUTHERN DISTRICT OF NEW YORK	
STALCO INTERNATIONAL CORPORATION,	-X :
Plaintiff,	
-against-	: 72 Civ. 4926
FINANCIAL ENTERPRISES OF THE EAHAMAS LTD., HESNES SHIPPING,	:
A.S. and PER ARMSTEIN ARNEBERG,	:
Defendants.	:
	-x
MMI LTD. and INTERCAMBIO COMERCIAL KATZ Y ARSARAZ S.A.,	
Plaintiffs,	: 71 Civ.3118 (Owen,J.)
-against-	: AFFIDAVIT IN OPPOSITION TO
PEPACO CHARTERING CORPORATION,	: CROSS-MOTION TO DISMISS
Defendant.	
• • • • • • • • • • • • • • • • • • • •	-X
STATE OF NEW YORK )	
COUNTY OF NEW YORK )	

MORDECHAI GOLDBERG, being duly sworn, deposes and says:

During all the time referred to herein, I was an employee and special representative of STALCO INTERNATIONAL CORPORATION, and I have personal knowledge of all the facts involved in these actions.

STALCO INTERMATIONAL CORPORATION (hereafter STALCO) plaintiff in 72 Civ. 4926, is a trading company (located in New York) which has business interests in Israel. INTERCAMENTO

#### Affidavit of Mordechai Goldberg

the plaintiffs in 71 Civ. 3118, is a Mexican company with similar interests. MMI LFD., the other plaintiff in 71 Civ. 3118, is a business concern located in Israel.

In 1970, these three business concerns became aware that TANKER SERVICES, LTD., (hereafter TANKER) was looking for a large tanker which it could charter on a long-term basis. Because of close business and personal relationships with TANKER, the three plaintiffs were offered the chance by TANKER to obtain that tonnage. They agreed to combine their efforts in attempting to arrange the tonnage, but since none of them was experienced in obtaining a ship to perform the charter, we three decided to enlist another party into the venture who had expertise in this field. The other party finally enlisted was PER ARNEBERG, individually, and as agent for the defendant corporations whom he brought into the negotiations.

PER ARNESERG, a named defendant in 72 Civ. 4926 is a ship broker who operated through the wholly or partially owned corporations named as defendants, numely, PERACO CHARTERING CORPORATION (hereafter PERACO), FINANCIAL EXTERPRISES OF THE BAHAMAS LTD (hereafter FINANCIAL), and HESNES SHIPPING, A.S., (hereafter HESNES).

In essence, the agreement between STALCO, MMI LTD., and INTERCAMBIO, on the one hand, and ARMEBERG, PERACO, FINANCIAL and HESNES on the other hand was that the first group (hereafter the MMI group) was to supply a charterer, and the second group,

#### Affidavit of Mordechai Goldberg

(hereafter the ARNEBERG group) was to supply a ship to fill charterer's requirements. This agreement was not put in a single writing, but was composed of numerous personal conversations, telex communications, letters, and the course of dealing of the parties thereto.

The document dated April 25, 1971, which is referred to in both complaints was not the final manifestation of our agreement but merely a memorandum relating to the splitting of commissions on the charter party, and on the purchase of the vessel which was to perform.

party to the agreement is incorrect. On May 19, 1971, ARNEBERG signed an addendum to this memorandum not as an agent, but as a principal, and in that addendum he agreed to be personally responsible for payment to the MMI group. This addendum is found on page two of Exhibit 1, annexed hereto. KATZ and SHAMIR as the representatives of INTERCAMBIO and MMI LTD. respectively, constituted a majority and signed for the MMI group.

As already indicated, however, this was by no means the entire contract between the parties. There were numerous telex messages, letters and memoranda which also comprise part of the contract. Forty-two of these writings are the subject of a Request to Admit dated December 9, 1974, which I understand has been filed in court and which I ask the Court to refer to. In addition, there were personal and telephone conversations, all of which went into the making of the entire contract.

#### Affidavit of Mordechai Goldberg

The duties of the parties to the contract have already been cutlined. The MMI group, plaintiffs herein, were to produce a charterer, the ARNEBERG group was to produce a ship. As per the April 25, 1971 memorandum, the compensation to each group was to be a division of all brokerage commissions from either transaction. Evan though the MMI group had nothing to do with the purchase of the ship, it was entitled to a share of the commission. Division of the commission on the one transaction was to be consideration for the division of commission on the other. The ARNEBERG group had nothing to do with securing the charterer, but the charter would enable them to purchase the ship.

During April and May of 1971, there were extensive negotiations, including two separate meetings in Tel Aviv, which finally resulted in TANKER's agreement to charter the M.V.WARWICK FORT. The EMI group had TANKER deliver a signed charter and a bank guarantee that the hire would be paid, all of which was being held in escrew until defendants had obtained the vessel.

Despite repeated assurances that they could deliver the vessel, whenever required, defendants failed to do so and the deal was lost solely through their failure. Due to this breach of contract on the part of the defendants, the plaintiffs' lost their share of the commissions amounting to \$585,398.55, and this constitutes the first cause of action. The second cause of action is for the reasonable value of work, labor, and services performed by plaintiffs in negotiating the charter, prompted by defendants'

# A 110 Affidavit of Mordechai Goldberg

misleading assurances that they could deliver the ship whenever required. This amounts to \$86,717.24.

Mordecai Goldberg

Sworn to before me this

day of March, 1975.

NICHAEL J. CARCICH
Notory Public, State of New York
No. 03-516595
Qualified in Bronx County
Commission Expires March 30, 197-

## EXHIBIT 1--LETTER DATED APRIL 25, 1971 ANNEXED TO AFFIDAVIT OF MORDECHAI GOLDBERG

April 25, 1971

Mr. Bur A. Arneberg Hilton Hotal Tal Aviv Israel.

Subject : Time Charter M/T - Warwick Fort.

Dear Mr. Arneberg :

Enclosed clease find the firm offer from Tanker Services Ltd. for the above vessel addressed to us, ref. 737/71, dated April 25, 1971.

You may make use of this firm offer in order to conclude and sign the Timo Charter contract for this vessel under the terms specified in the above referenced firm offer.

Further to point (5° of this offer, it is our understanding that a revolving irrevocable Letter of Credit will be issued by an Israeli bank to cover the monthly payments due during the life of the charter.

It is agreed that you will cause us to be paid at least one half of one tercent of the total sales price (of approximately \$18,500,000) of this vessel, and 1.23 percent of the gross charter income therefrom.

t is needless to stress the extreme importance of your rapidly concluding this charter party. You are well aware of the extreme imports effort and personal involvement of my colleagues and myself which have resulted in our finally obtaining this firm counter offer rom Tanker Services valid for the period you have requested.

fou must also take note of the fact that you have already presented irm offers to Tanker Services for this vessel.

A. M.1. 10

ימ.נו.יי. ברש

I would further emphasize that in our conversation with Mr. A. Mayron in your presence he made it clear that the only reason for his maintaining an average rate in excess of \$4.00 today despite the declining freight market is because our negotiations have commenced some weeks ago. Should he restart negotiations today he would offer considerably less in view of the above.

Consequently, we feel that your good name and ours depend on your performance in delivering this vessel and concluding the charter party within the time limits specified.

M. D. Katz

for I. C. Katz Y Arsaraz S. A.

Very truly yours

H. Shamir

for M. M. I. Ltd.

I fully agree to all the above

Per Arnstain Amabang

For Ferzoo Chartering Corp. of New York Financial Enterprises of Bahamas, Ltd. of Nassau and Nessrs. Hesnes Shipping A/S, Oslo.

The sum due you under the above will be fayethet your met of the funds credited to my concerns with Bunk Leumi L'Israel B. H. or and of the above mentioned £/C. I underlake to issue viceweeable in structions to the Bank therefor forthwith upon the Charter Party being delivered, signed to Tearles Levis Lyd.

Idan 19 May 1971

Segned

## REPLY AFFIDAVIT OF PER A. ARNEBERG IN SUPPORT OF CROSS-MOTION TO DISMISS

UNITED STATES DISTRICT COURT		
SOUTHERN DISTRICT OF NEW YORK		
	X	
	:	
STALCO INTERNATIONAL CORPORATION,		
	:	
Plaintiff,		
	:	72 Civ. 4926
-against-		
	:	
FINANCIAL ENTERPRISES OF THE BAHAMAS		
LTD., HESNES SHIPPING, A.S., and PER	:	
ARNSTEIN ARNEBERG,		
	:	
Defendants.		REPLY AFFIDAVIT IN
100 100 100 100 100 100 100 100 100 100	X	SUPPORT OF CROSS-
		MOTION TO DISMISS
MMI LTD. and INTERCAMBIO COMMERCIAL	:	
KATZ & ARSARAZ S.A.,		
	:	
Plaintiffs,	;	
	:	
-against-		
	: .	71 Civ. 3118
PERACO CHARTERING CORPORATION,		
	:	
Defendant.		
	-X	

STATE OF NEW YORK, COUNTY OF NEW YORK ) SS.:

- I, PER A. ARNEBERG, being duly sworn, depose and say:
- l. During all the times referred to in the complaint herein, I was President of PERACO CHARTERING CORPORATION ("PERACO"). a shareholder of FINANCIAL ENTERPRISES OF BAHAMAS, LTD., ("FINANCIAL") and a shareholder of HESNES SHIPPING A.S. ("HESNES").
- 2. PERACO has offices at 17 Battery Place, New York, New York. PERACO is a ship brokerage office with over 35 employees. FINANCIAL and HESNES are corporations which owned

#### Reply Affidavit of Per A. Arneberg

interests in ships and conducted chartering activities. PERACO is the agent for both corporations in New York.

- 3. I do not conduct business in an individual capacity. Business dealings and contacts are made and carried out by me as a representative of PERACO. I am an employee of PERACO and have an office at its place of business. I personally maintain no office or operating facility.
- 4. I have at no time during the dealings which form the basis of this action represented that I was acting in an individual capacity.
- 5. Mr. Goldberg's affidavit of March 11, 1975 sets forth that "the other party finally enlisted was PER ARNEBERG, individually, and as agent for the defendant corporations whom he brought into the negotiations." The circumstances upon which Mr. Goldberg bases this inference are unknown to me. I do not hold myself out as a business entity.
- that I act as a principal when I signed the postscript dated "19 May, 1971" to the April 25, 1971 letter (attached hereto as Exhibit "A"). The substance of the postscript does not impute that I had any personal stake in the ransaction whatsoever. Rather, it reveals the details with respect to the passage of funds. I, as a representative of my principals, undertook to be a conduit for the funds.

- 7. At the end of the first paragraph on page 3 of the March 11, 1975 affidavit, Mr. Goldberg states that "KATZ and SHAMIR as the representatives of INTERCAMBIO and MMI LTD. respectively, constituted a majority and signed for the MMI group." In fact, the letter makes absolutely no reference to Mr. Goldberg or STALCO. Yet, without any further justification, Mr. Goldberg stipulates that the two, acting as a majority, represented STALCO, the undisclosed principal to whom the benefits of the signing allegedly inure. Thus, in one paragraph, Mr. Goldberg ascribes personal responsibility to your affiant who signed in a representative capacity, and at the same time brings STALCO within the ambit of the April 25, 1971 letter, despite the fact that his principal was not even mentioned.
- 8. The relationship between the principals was that of co-brokers. It was represented to PERACO that a charter could be fixed with TANKER SERVICES. Plaintiffs did not mention "exclusive" rights to the charter at any time. As far as FINANCIAL was concerned, it would attempt to find a suitable vessel as quickly as possible in order to earn its commission. But if it did earn a commission, contrary to Mr. Goldberg's reckoning of the practice in the brokerage business, the commission would be paid by the Owner of the vessel and charterer, not by the brokers. No consideration ran between the brokers and there was no contract between them. Brokers, after all, do not pay commissions to other brokers. No joint venture

#### Reply Affidavit of Per A. Arneberg

existed between any defendants and any plaintiffs. PERACO would have had no reason to share profits and commingle its skills with any plaintiffs and it, in fact, did not.

9. A memorandum agreement (attached hereto as Exhibit "B") was finally sent to defendants' counsel by plaintiffs' attorney (the production of this document had been promised as far back as August 25, 1971).

The document clearly shows that STALCO was not only not a member of the chartering group, but that its compensation "will be paid by KATZ out of his share." Of the other members of this group, Mr. Levy had never been made known to me. It was my understanding, however, that Mr. Katz had a connection either directly or through an associate to a Dr. Dienstein, the Deputy Minister of Finance of Israel. Mr. Levy may have been that connection or a possible "front" for Dr. Dienstein. Indeed, in Mr. Katz' deposition of August 25, 1971, Mr. Katz indicated that Dr. Dienstein had made an unusual accommodation ("It does not matter what we talked and how I tried to convince him and asking him and using facts that we know each other for so many years, but finally he agreed." [p. 30]). Since TANKER SERVICES was partially owned by the Government, Dr. Dienstein could presumably wield fiscal power discriminately. In early 1971, your affiant had no knowledge of the internal arrangements of these several parties. Mr. Levy's role in the group was known to plaintiffs (page 9 of Mr. Katz' deposition). Never-

Reply Affidavit of Per A. Arneberg

theless, STALCO participated in this action against the defendants without any basis for its claims.

10. The final paragraph of the memorandum (Exhibit "B") indicates that the three-way relationship which did not involve STALCO was to continue on indefinitely. There is no suggestion by plaintiffs that it was terminated or amended. Since it was executed in February, 1971, it must have been operative in April, 1971. And yet Mr. Goldberg states that Mr. Katz and Mr. Shamir executed the April 25, 1971 letter (Exhibit "A") for and on behalf of STALCO as an in absentia partner. But there is no evidence to support this partnership relation.

WHEREFORE, your affiant respectfully requests that the first count of the complaints in both actions be dismissed.

/S! PER A ARNEBERG

Sworn to before me this 19th day of March, 1975.

15/ DONALD F. MOONEY

NOTARY PUBLIC

Notary Fublic, State of New York
No. 60-2754650
Qualified in Westchester County
Commission Expires March 30, 1975

EXHIBIT A--LETTER DATED APRIL 25, 1971 ANNEXED TO REPLY AFFIDAVIT OF PER A. ARNEBERG

Identical to Letter dated April 25, 1971 annexed to Affidavit of Mordechai Goldberg printed herein at pages All1 to All2.

## EXHIBIT B--MEMORANDUM OF AGREEMENT ANNEXED TO REPLY AFFIDAVIT OF PER A. ARNEBERG

#### MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is intended to formalize the understandings reached between Messrs. Marcos Katz, Joseph Levy and Mayman Shamir with regard to a proposed venture for the lease of a 106,000 Ton Tanker to the Trans-Asiatic Oil Company of 125 Machashmonaim Street, Tel Aviv, Israel (hereinafter the "Venture").

It is agreed that income, if resulting from the Venture, will first be used to cover out-of-pocket expenses of the parties. Remaining income will be divided as follows:

- 1. To M. Katz and/or Intercambio Commercial (hereinatter "Katz") 50%.
- 2. To J. Levy or his designee (hereinafter "Levy") 25%.
- 3. To H. Shamir or his designee (hereinafter "Shamir") 25 %.

Katz will be responsible for all activities and contacts outside Israel including but not limited to obtaining the vessel, negotiations and agreements with ship owners and brokers — including Stalco. All remuneration due Stalco or any other broker will be paid by Katz out of his share.

Shamir and Levy will be responsible for contacts and negotiations with Israeli operators and all agreements and efforts relating thereto.

Shamir and Katz will place the facilities of N.M.I. Ltd. and Intercambio Commercial respectively at the disposal of the Venture. Substantiated out-of-pocket expenses of N.M.I. and Intercambio Commercial will be reimburgable against invoices from income as aforesaid.

Exhibit B Annexed to Reply Affidavit of Per A. Arneberg

- 2 -

Executional expenses for which relabursement as above is required will not be incurred without the prior agreement of the parties.

It is agreed that the terms of this Memorandum will serve to govern the relationship between the parties for all other ventures relating to the lease of large tankers or bulk carriers to Israeli clients which may materialize in lieu of or in continuation of the Venture as above defined.

In witness of agreement the parties hereto have hereunder set their hand

L KATZ

J. LEVY

H. SHAMIR

#### REPLY AFFIDAVIT OF DONALD F. MOONEY

NITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	-x
STALCO INTERNATIONAL CORPORATION,	•
Plaintiff,	
-against-	: 72 Civ. 4926
FINANCIAL ENTERPRISES OF THE BAHAMAS, LTD., HESNES SHIPPING, A.S. and PER	:
ARNSTEIN ARNEBERG,	
Defendants.	
	-x
MMI LTD. and INTERCAMBIO COMMERCIAL KATZ & ARSARAZ S.A.,	
Plaintiffs,	: 71 Civ. 3118
-against-	: /1 Civ. 3118
PERACO CHARTERING CORPORATION,	REPLY AFFIDAVIT ON BEHALF OF DEFENDANTS
Defendant.	REVIEWING MOTIONS BEFORE THE COURT
	-x
STATE OF NEW YORK ) : SS.: COUNTY OF NEW YORK )	

- I, DONALD F. MOONEY, being duly sworn, depose and say
  that:
- 1. I am attorney for the defendants in both actions herein and am duly admitted to practice before the District Court for the Southern District of New York. I am familiar with all of the pleadings and proceedings heretofore had in this action.
  - 2. Recent events in these proceedings have confused

some of the issues which have been presented to this Court for resolution. I shall attempt to succinctly describe the flow of the proceedings which are relevant to this hearing.

- 3. Initially, plaintiffs moved to amend both complaints, As is evident from the proposed amendments, the effect of them is to charge plaintiffs' theory from reliance on the April 25, 1971 letter frequently mentioned in the affidavits and briefs before the Court, to reliance on the letter plus all other unspecified discussions, memoranda, etc. between the parties. It is this collation of discussions and memoranda which plaintiffs would allege formed the contractual relation between the parties.
- 4. Defendants object to the motion to amend on the ground that plaintiff; had ample time in the more than three and one-half years since filing their original complaint to make the corrective amendment. Defendants promptly conducted extensive discovery and examinations before trial in 1971, at considerable expense, a matter of months after the original complaint was served. Plaintiffs had adequate opportunities for amendment when they dropped parties, filed an additional suit and consolidated the two suits for jurisdictional reasons in February, 1973. But they repeated in such amended complaint reliance on the written April 25, 1971 agreement. Defendants are prejudiced by the delay and by the need to institute further discovery and by the fact that Mr. Shamir of MMI has died. But the major objection to the amendment is that it is insufficient at law because it is within the Statute of Frauds.

2. STALCO is not a real party in interest;

action before the Court lacks an indispensable

3. Defendant Arneberg is not a real party in

5. Plaintiffs have commenced and maintained

6. After defendants served the foregoing papers, plain-

an action against defendants in the New York State

Supreme Court, New York County, seeking the same

April 25, 1971 letter with a postscript and the other is a memoran-

7. Plaintiffs then served answering papers to the

cross motion to dismiss and reply papers to defendants' opposition

dum agreement signed by Mr. Levy, Mr. Katz and Mr. Shamir which

sets forth their agreement to find charters for vessels and de-

4. Since the plaintiffs are joint obligees each

of the bargain never occurred;

relief sought in this Court.

tiffs' attorneys produced two documents. One is the

party;

fines the role of STALCO.

interest as to Count One or Count Two.

to the amendment. These papers rebuked all previous bases upon which plaintiffs claimed relief. Plaintiffs set forth a new basis, i.e., that the relationship between the parties was that of joint adventures. By raising this new basis, plaintiffs apparently seek to circumvent the Statute of Frauds problems raised in defendants' papers.

- 8. Defendants had only three days in which to react to this new basis for recovery. However, the Southern District Court cases cited by plaintiffs demonstrate that the new basis is not properly raised and is not supported by the pleadings. Further defendants point out the relevance of the recently produced documents in dismissing the claim against Mr. Arneberg and in dismissing the claim by STALCO which is not a real party in interest, and the claim by MMI and INTERCAMBIO for failure to join an indispensable party.
- 9. Plaintiffs, dissatisfied that a shipping deal was not consummated, sought recovery in their complaint filed in July, 1971, relying on the commission letter of April 25, 1971. they added Mr. Arneberg as an individual defendant although he was (now admittedly) not a party to that alleged agreement. All the defendants promptly and vigorously in 1971 defended the claims by extensive examinations before trial, legal research, investigations and discovery all at considerable expense. In 1973, plaintiffs amended their complaint, dropping parties plaintiff and defendant, in an effort to avoid patent lack of

Reply Affidavit of Donald F. Mooney

jurisdiction of this Court. They also commenced an identical action in the Supreme Court of the State of New York which is still pending. The amended complaint in 1973 alleged the same written commission agreement. Now the plaintiffs are trying to persuade this Court that it is just and fair, on the eve of trial, almost four years after commencement of the litigation, that they amend and change from their reliance on the April 25, 1971 letter to a collation of unspecified oral conversations and other unspecified communications. Meanwhile, plaintiffs have maintained a similar action in the New York Supreme Court, a fact that reflects on their good faith and their confidence in the maintenance of this action in this Court. As counsel for defendants, obviously we focused our extensive investigations, legal research and depositions on the alleged written agreement dated April 25, 1971. One of the key witnesses examined is dead. Defendants have spent and incurred substantial sums on counsel fees, transcripts and disbursements. Defendants' rights must be considered. Rule 1 of the Federal Rules requires that the Rules be construed to "secure the just, speedy and inexpensive determination of every action." This action has been shown to be within the Statute of Frauds and without merit. Plaintiffs' complaint should be dismissed.

Sworn to before me this 20th day of March, 1975.

- į

LORETTA M. MURPHY
MOTARY PUBLIC, STATE OF HEW YORK
NO. 24-4523359
Qualified in Kircs County
Commission Expires Warch 20

NOTICE OF MOTION TO AMEND COMPLAINT

ORIGINAL FILED

UNITED STATES DISTRICT COURT SCUTHERN DISTRICT OF NEW YORK

MAY 7 1915

STALCO INTERNATIONAL CORPORATION,

72 Civ. 4926

Plaintiff,

(:EL)

-against-

PINANCIAL ENTERPRISES OF BAHAMAS, LTD., HESNES SHIPPING, A/S and PER ADMSTEIN ARMEBURG,

OF MOTION

Dofendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of DONALD B. ALLEM, sworm to the 7th day of May, 1975, the undersigned will move this Court on the 20th day of May, 1975, in Room 2003, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 15 of the Federal Rules of Civil Procedure, amending Paragraph "1" of the complaint herein, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, Hew York May 7, 1975.

To: DONALD F. MOOLEY, E30.
Attorney for Defendants
17 Battery Place
New York, N. Y. 10004

Yours, etc., CICHALOWICE & CALLAN

A Member of the Firm

A Member of the Firm Attorneys for Plaintiff 80 Broad Street New York, N. Y. 10004



#### 127

AFFIDAVIT OF DONALD B. ALLEN IN SUPPORT OF MOTION TO AMEND COMPLAINT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF META YORK	
STALCO INTERNATIONAL CORPORATION,	73 04 4006
Plaintiff,	72 Civ. 4926
	(;ZT)

-against-

PHIANCIAL ENTERPRISES OF BAHAMAS, LTD., HESURS SHIPPING, A/S and PER ARMSTEIN ARTEBERG,

AFFICAVIT

Defendants. :

STATE OF NEW YORK ) 1 3.: county of I'm York )

Dillaid D. Alliell, being duly sworn, deposes and says:

I am a member of the fire of CICHANOWICZ & CALLAIR, attorneys for plaintiff herein, and am familiar with all the pleadings and proceedings heretofors had herein.

This is a motion to amend the complaint by deleting the allegation that plaintiff has a place of business in How York. For the convenience of the Court we have set out the entire first paragraph of the complaint with paranthesis around the part to be deleted:

> 1. Plaintiff ST LCO THERMATIONAL components is a comporation created and existing

under the laws of the State of California (having a place of business at 110 East 59th Street, New York, New York).

with which it is now consolidated. The original complaint was filed July 13, 1971 and included all parties now named in the two suits. At that time STALCO was doing business in New York City, but all such activity ceased by the end of that year. When the above captioned complaint was filed in November, 1972, the attorney who drafted it (no longer with this office) was unaware of the changed status and continued to plead incorrectly that STALCO was doing business in New York.

We regard this as a minor amendment, since the answer meraly denies knowledge and raises no issue on this point. However, since so many technical issues have recently been raised in this case, we believe it desirable to eliminate any possibility that defendant may be surprised. The correct status of STALCO was recently investigated in connection with motions now pending before the Court and revealed the information which we are promptly presenting.

We do not see how defendants can be harmed by this change. The same attorney represents all defendants in both actions and it will actually simplify the trial, since with

### 129 Affidavit of Donald B. Allen

STALCO no longer doing business in New York, there is diversity between all plaintiffs and all defendants in both suits.

WHEREFORE, deponent prays for an order desming the complaint amended as indicated herein. Manna ( 13. Alles

Donald B. Allen

Sworn to before me this

7th day of May, 1975.

John Philip Schapped

Notary Public, State of New York
No. 23-6-187350

Qualified in Prove County
Torm Expires March 39, 1976

AFFIDAVIT OF DONALD F. MOONEY IN OPPOSITION TO MOTION TO AMEND COMPLAINT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
STALCO INTERNATIONAL CORPORATION, :	
' Plaintiff, :	
-against-	72 Civ. 4926
	AFFIDAVIT IN OPPOSITION FOR LEAVE TO AMEND
Defendants.:	
x	
STATE OF NEW YORK )	

COUNTY OF NEW YORK

DONALD F. MOONEY, being duly sworn, deposes and says:

- 1. I am a member of the Bar of the United States District Court for the Southern District of New York. I am the attorney for defendants herein and I am familiar with all of the pleadings and proceedings heretofore had.
- 2. Plaintiff STALCO INTERNATIONAL CORPORATION (Stalco) now comes before this Court seeking leave to further amend its complaint for the purpose of deleting that part of paragraph 1 which states that STALCO has a place of business at 110 East 59th Street, New York, New York. Plaintiff thus trys to remedy "nunc pro tunc" a jurisdictional defect existing at the time plaintiffs commenced this action in that Stalco had its principal office in New York and was a citizen of New York at the time the action was commenced.
- Plaintiff's attorney affirms that this amendment is necessary because the allegation in the original complaint was incorrect.

#### Affidavit of Donald F. Mooney

The blame for this error is "placed on the attorney who drafted the complaint." Plaintiff's present attorney makes the suggestion that the proposed amendment is minor and that it is a technical issue. Plaintiffs' counsel avers that the "correct status of STALCO was recently investigated in connection with motions now pending before the Court."

- 4. A Hearing was held before Magistrate Schreiber on May 15, 1975, to consider an earlier motion by plaintiffs to amend their complaints and a cross motion by defendants to dismiss the complaints or parts of the complaints. At the hearing, the attorney for plaintiffs mentioned that STALCO was no longer doing business in New York. Your affiant further recalls plaintiff's attorney suggesting that the principal place of business of STALCO in 1971 was not in New York. The transcript of the hearing will clarify the point.
- 5. A review of the pleadings hereto had in this and other cases indicates that STALCO did have principal offices in New York through 1975.
- 6. Mr. Allen states in his affidavit, dated May 7, 1975:

  "At that time (July 13, 1971) STALCO was doing business in New York City, but all such activity ceased by the end of that year." This statement is not confirmed or corroborated by any affidavit of his client STALCO, and the application is defective on that ground alone, particularly in view of the affidavits and exhibits shown to be entirely contradictory to Mr. Allen's affidavit.
  - 7. In an affidavit dated November 20, 1972, Mr. Mc Namara,

#### Affidavit of Donald F. Mooney

the attorney for STALCO, stated that STALCO has its principal place of business in New York City." This affidavit was submitted in support of plaintiffs' motion to amend their complaint and consolidate the two actions.

- 8. The second action had been commenced 3 days earlier, on November 17, 1972. And defendants were served with a complaint signed by Byron Callan, of the firm of Cichanowicz & Callan. That complaint, File Number 72 Civil 4926 admitted that STALCO did business in New York City.
- 9. This affidavit of Mr. McNamara is consistent with representations made by STALCO in the Supreme Court of the State of New York, County of New York in August of 1972. While Mr. Allen suggests that a previous attorney made an error, STALCO was nevertheless holding itself out as a New York resident and citizen long after 1971 and invoked the jurisdiction of the New York State Supreme Court.

In a petition submitted to the State Supreme Court on August 3, 1972, praying for a stay of an arbitration, Index No. 15753/72 STALCO stated that it was a "corporation organized and existing under the laws of the State of California, with principal offices at 919 Third Avenue, New York, New York." (Copy of the first page of petition is attached hereto as Exhibit "A"). Thus, approximately 8 months after Mr. Allen now says STALCO had left New York, STALCO was representing that it was principally located in New York.

10, On or about August 24, 1972, STALCO commenced an action
In the New York Supreme Court, County of New York containing claims

#### Affidavit of Donald F. Mooney

identical to those brought in Federal Court. The complaint alleged that STALCO "is a corporation created and existing under the laws of the State of California having a place of business at 110 East 59th Street, New York, New York."

- 11. The fact that STALCO was principally located in New York is confirmed by its employee and special representative, Mr. Mordechai Goldberg. At the deposition of STALCO taken on December 13, 1971, engaged in the following colloquy with your affiant:
  - Q. Where was your office then and now?
  - A. The same place, 110 East 59th Street.
  - Q. What was the business of STALCO?
  - A. STALCO is a trading -- international trading company in non-ferro metal and commodities.
  - Q. Where are its offices?
  - A. STALCO?
  - Q. Yes.
  - A. 110 East 59th Street.
  - Q. Does it have an office in California
  - A. Whittaker has an office in California.

It appears from the foregoing that STALCO'S only office was in New York.

12. More recently, Mr. Goldberg confirmed that STALCO was located in New York. In an affidavit submitted to on an unspecified day in March, 1975, Mr. Goldberg stated in the second paragraph:

"STALCO INTERNATIONAL CORPORATION (hereinafter STALCO) plaintiff in 72 Civ. 4926, is a trading company located in New York which has business interests in Israel."

- 13. Plaintiff's counsel served on the defendants no memorandum setting forth the points and authorities relied upon in support of the motion, as required by the rules of this Court.
- 14. This motion is the third motion that plaintiffs have made to cure their complaint. 72 Civ. 4926 is the third identical action instituted against defendants. The original complaint was filed in July, 1971, almost four years ago.

WHEREFORE, defendants respectfully request that STALCO's motion be denied or if the motion not be denied, that plaintiff STALCO be required to adduce documentary evidence at its own expense to prove what its citizenship is; that all other plaintiffs be required to adduce documentary evidence to prove their citizenship at their own expense; that defendants' rights to make appropriate motions following the determination of the citizenship of plaintiffs be preserved; and that plaintiffs be required to pay defendants' expenses in defending these motions to amend including counsel fees.

Sworn to before me this day of May, 1975.

EXHIBIT A--PETITION IN NEW YORK SUPREME COURT, PAGE 1
ANNEXED TO AFFIDAVIT OF DONALD F. MOONEY

13	SUPPLEIE COURT OF THE STATE OF NEW YORK		
-		x	
	In the Matter of	:	
Т	he Application of Stalco International Corp.,	:	
	Petitioner,	:	
F	or a Judgment Staying the Arbitration	:	PETITION Index No./57
C	Commenced by International Chemical Corp.,	:	Index no.777
	Respondent.	·x	Propose I C.
			Ville
Т	TO THE SUPREME COURT OF THE STATE OF NEW YORK:		
	The petition of Stalco International	Corp	oration -
1	respectfully shows and states:		

- 1. Petitioner is a corporation organized and existing under the laws of the State of California, with principal offices a 919 Third Avenue, New York, New York.
- 2. Upon information and belief, respondent is a corpor tion organized and existing under the laws of the State of New York, with principal offices at 720 Fifth Avenue, New York, New York.
- 3. On the 19th day of June, 1972, petitioner received respondent's Demand for Arbitration, a true copy of which is attached as Exhibit A.
- 4. Respondent's claim arises in connection with a sale transaction entered into by petitioner and respondent on June 16, 1970. The decements which form the sales contract for the transaction at issue are a "purchase order" sent by respondent to petitioner (attached herewith, as Exhibit B1/B2), and a "sales"

REPLY AFFIDAVIT OF DONALD B. ALLEN IN SUPPORT OF MOTION TO AMEND COMPLAINT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
	X	
STALCO INTERNATIONAL CORPORATION,		
Plaintiff,	:	
-against-	•	72 Civ. 4926 (MEL)
FINANCIAL ENTERPRISES OF BAHAMAS, LTD., HESNES SHIFFING, A/S AND PER ARNSTEIN ARNEBERG,	:	REPLY AFFIDAVTT IN SUPPORT OF MOTION
Defendants.	•	
	X	
STATE OF NEW YORK )		

DONALD B. ALLEN, being duly sworn, deposes and says:

I have read the affidavit of Donald F. Mooney submitted in opposition to plaintiff's motion to amend the complaint dated May 7, 1975. I make this brief reply.

We make this motion to eliminate any claim of surprise at the trial, since defense counsel has alleged in prior proceedings that it was "misled" by the pleadings.

Defense counsel now objects to our correcting an allegation in the pleading to conform with the truth.

The facts needmnot be established at this time; we simply point out what we intend to prove. The facts will be fully proven at the trial.

Donald B. Allen

### Δ 137

REPORT OF MAGISTRATE SOL SCHREIBER AND RECOMMENDATIONS

UNITED	STA	TES	DIST	RIC	CT CC	URT	
SOUTHER	N D	ISTR	ICT	OF	NEW	YORK	

STALCO INTERNATIONAL CORP.,

Plaintiff,

-against-

FINANCIAL ENTERPRISES OF THE BAHAMAS,

Defendant.

MAGISTRATE'S REPORT AND RECOMMENDATION

72 Civ. 4926 (MEL)

and

M.M.I. LTD & INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ,

Plaintiff,

-against-

PERACO CHARTERING CORP.,

Defendant.

71 Civ. 3118 (MEL)

1

#### INTRODUCTION

The controversy in these actions concerns an agreement between plaintiffs and the defendants which provides that plaintiffs would secure a charterer and defendants would produce the owner of a vessel willing to charter such vessel. All commissions were to be divided equally between plaintiffs and defendants. Plaintiffs contend that they completed performance by obtaining a charterer and that defendants breached the alleged

contract by their failure to deliver a vessel. Plaintiffs seek recovery of their share of lost commissions.

The original complaint in this action was filed on July 13, 1971. The basis of jurisdiction was alleged to be diversity of citizenship. On the face of that complaint, this Court lacked jurisdiction since there was a failure of diversity. The place of citizenship of both plaintiff Stalco and defendant Peraco was alleged to be New York. Actually, the original complaint stated that Stalco was incorporated in California and had a place of business in New York. However, in subsequent papers filed with the Court, plaintiffs stated that Stalco had its "principal" place of business in New York City. Apparently plaintiffs realized that, pursuant to 28 U.S.C. §1332, Stalco could not maintain an action in this Court with Peraco as defendant, therefore, plaintiffs filed suit in New York Supreme Court in August 1972.

Three months later, more than one year after the original complaint was filed in this Court, the plaintiffs returned to federal court and attempted to cure the jurisdictional defect. Through a series of complicated procedures, the plaintiffs sought to confer jurisdiction on this Court where none had existed previously. The facts are as follows

# 139

Report of Magistrate Sol Schreiber and Recommendations

In November 1972, a second complaint was filed in this Court by plaintiff Stalco (New York citizenship) against all of the defendants in the first action except Peraco (New York citizenship). A few days later plaintiffs in the first action filed a motion with this Court to: 1.) drop certain parties from the complaint, specifically, those plaintiffs and defendants named in the second complaint; 2.) amend the complaint to conform to this change; 3) consolidate the two actions. Plaintiffs stated in their moving papers that the purpose of this maneuver was to preserve the jurisdiction of this Court. The only opposition to the motion was a two page affidavit submitted by defendants.

Upon Magistrate's Recommendation of Magistrate Raby, this Court granted the motion on April 6, 1973. The present lineup of parties is as follows:

Citizenship for Jurisdictional Purposes

Name of Party

71 Civ. 3118 Action I

Plaintiffs: MMI

Intercambio

Israel Mexico

Defendants: Peraco

New York

Action I 72 Civ. 4926

Plaintiff: Stalco New York

Defendants: Financial Enterprise

Bahamas Norway Norway

Hesnes Arneberg

#### I MOTION TO DISMISS

There are presently three motions pending before this Court. We will first consider delendant's motion to dismiss the action on several grounds.

#### A. Indispensable Parties

One of the grounds for dismissal urged by defendants is failure to join indispensable parties pursuant to Rule 19, F.R.C.P. Defendants contend that Stalco is a necessary party to the original action and since he cannot be joined because of jurisdictional problems, the action should be dismissed.

formed an association, MIMI group, which included all three plaintiffs. In the complaint in Action II, Stalco alleges the formation of the same association. This group entered into this alleged contract with the defendants whose sole alleged duty was to supply a vessel to plaintiffs as joint obligees. Generally, where there is a single promise to be performed, in this case, to provide a vessel or vessel owner, the joint obligees are held to be indispensable parties. See 3A Moore, Federal Practice §19.11 (2nd ed. 1968); Rosen v. Texas Co.,

In determining whether an action should proceed in the absence of a necessary party who cannot be joined or whether

it should be dismissed because such party is indispensable to the action, one must look to the four factors outlined in Rule 19(b), F.R.C.P. Plaintiffs concede that Stalco may be a necessary party but contend that the two of the equitable considerations set forth in Rule 19(b), namely, prejudice to the absent party and adequacy of the judgment in the absence of the party, would not require a determination of indispensability on the facts of this case since Stalco would be before the Court in the consolidated action. The real question is whether the device of consolidation may be used to circumvent the question of jurisdiction. Assuming Stalco is an indispensable party, the issue is whether this problem can be solved by separating the two actions and consolidating them.

In federal courts, consolidation is permitted as a matter of convenience and economy. Actions which are consolidated do not lose their separate identities; they are not merged into a single cause. <u>Johnson v. Manhattan Ry. Co.</u>, 289 U.S. 479 (1933); <u>Abrams v. Occidental Petroleum Corp.</u>, 44 F.R.D. 543 (S.D.N.Y. 1968). Consolidation does not change the rights of the parties, nor does it make those who are parties in one action parties in another. See 5 Moore, Federal Practice \$42.02, (2nd ed. 1948). Thus, plaintiff Stalco does not become a party to the first action by consolidation of the two suits.

While the question of indispensability is not a pure jurisdictional issue, it is inherent in the issue of federal jurisdiction. Bentinck v. Guaranty Trust Co. of New York, 109F. Supp. 827 (S.D.N.Y. 1952). The Court in the Bentinck case indicated that such jurisdictional issues must come first in the disposition of a case. The Court quoted from the case of Metropolis Theatre Co. v. Barkhausen, 170 F. 2nd 481, 484 (7th Cir. 1948), as follows:

The requirement for complete diversity cannot be brought about by a party failing to join, either with himself or on the opposite side, a party who is an indispensable party to the action, even though joining the absent party would result in a loss of jurisdiction by the federal court.

Since Stalco would not be "joined" to the action by consolidation, the device of the splitting the action to avoid the diversity obstacle negates the jurisdiction of this Court 'because indispensable parties are left out of both actions.

Rule 82, F.R.C.P., mandates that the federal rules are not to be constructed to extend the jurisdiction of the federal courts. The statute conferring diversity jurisdiction is also to be strictly construed. Thomson v. Gaskill, 315 U.S. 442, 446 (1942). In light of these two policies, the plaintiff Stalco cannot be allowed to confer jurisdiction on this Court through the technical device of consolidation. As the Court

noted in <u>United States</u> v. <u>Western Pac. R. Co.</u>, 352 U.S. 59, 69 (1956), subject matter jurisdiction cannot turn on the skill or "the whim of the pleader."

Therefore, in balancing the equitable principles mandated by Rule 19(b) without reference to the subsequent consolidation, this Court recommends that the action be dismissed for failure to join indispensable parties.

Considering the fourth factor of Rule 19(b), it is clear that plaintiffs have an adequate remedy if this action is dismissed. All parties presently before this Court are joined in a companion suit filed by plaintiffs in the New York Supreme Court. Thus, there is no prejudice to plaintiffs who have their remedy in state court.

# B. Waiver

Plaintiffs contend that defendants have waived the right to object to the lack of indispensable parties. This argument is without merit. The defense of failure to join indispensable parties is specifically preserved by Rule 12(h)(2), F.R.C.P., which allows the defense to be made "in any pleading permitted or ordered under Rule 7(a), or by motion for judgement on the pleadings, or at the trial on the merits."

The failure to plead such defense does not constitute

a waiver and it may be made the basis for a motion to dismiss.

Agrashell, Inc. v. Composition Material Co., 40 F.R.D. 395

(S.D.N.Y. 1966); Sweetwater Rug Corp. v. J & C Bedspread Co.

Inc., 198 F. Supp. 941 (S.D.N.Y.), aff'd 299 F. 2d 573 (2d Cir. 1962).

"As amended in 1966, Rule 12(h) makes it clear that there is no waiver as to three types of defenses and objections: ...

(2) the defense of failure to join an indispensable party ..."

3 Moore, Federal Practice §12.23 (2nd ed. 1948).

The case cited by plaintiff, Nat'l Board of YMCA v.

YMCA, 335 F. Supp. 615 (D.S.C. 1971) and Berger Lab Ltd

v. R K Laros Co., 24 F.R.D. 450 (E.D. Pa. 1959), are not binding authority on this Court.

The only case from this Circuit cited by plaintiff,

Parker Rust-Proof Co. v. Western Union, 105 F. 2d 976 (2d Cir.

1939), is distinguishable. There, the Court found that the

defendant deliberately withheld making the objection until it

was too late for plaintiff to sue in another court. In the

interests of equity, the court refused to sustain the objection.

In the case at bar, plaintiffs have instituted another suit

which is presently pending in state court and are thus not

preclude from seeking relief elsewhere.

More recent cases decided by this Court clearly follow

the language of the rule in holding that the defense of indispensable party is not waived. Agrashell, supra; Sweetwater Rug Corp., supra.

# II MOTION TO AMEND CITIZENSHIP OF STALCO

The second motion before this Court is a motion by plaintiff Stalco to amend the statement of citizenship in its complaint. In the original complaint in Action I and in the complaint in Action 11, Stalco represented that it had a place of business in New York. In at least two subsequent papers submitted to this Court, plaintiff Stalco alleged that its "principal" place of business was in New York City (See plaintiff's Notice of Motion filed 12/4/72, p. 4; Plaintiff's Memorandum filed 4/6/73, p. 7). Pursuant to 28 U.S.C. §1332, a corporation is a citizen of any state in which it is incorporated and of the state where it has its principal place of business. Thus, plaintiff Stalco should have pleaded its principal place of business to establish the requisite diversity jurisdiction. This was not done. In any event, Stalco now seeks to delete from the complaint any reference to a New York office.

Plaintiff asserts that 28 U.S.C. §1653, which permits amendments to cure defective allegations of jurisdiction, requires the Court to allow this amendment. It is generally

true that a complaint which fails to allege the citizenship of a party may be cured by amendment. Howard v. DeCordova, 177 U.S. 609 (1900). Also, where a complaint does not state that jurisdiction is founded on diversity but the alleged facts indicate that diversity of citizenship exists, the amendment is allowed. Decorative Cabinet Corporation v. Stor-Aid of Ohio, Inc., 10 F.R.D. 266 (S.D.N.Y. 1950). One court has stated that an application for an amendment to a statement of citizenship is usually construed liberally, "if it is possible to determine from the record that jurisdiction does in fact exist." John Birch Society v. Nat'l Broadcasting Co., 377 F. 2d 194, 199 (2d Cir. 1967). The intent of section 1653 is obviously to allow amendment where the record discloses that jurisdiction exists but the allegations have not been pleaded correctly. The entire record may be searched to discover facts necessary to cure the defect. Troupe Chicago, Duluth and Georgian Bay Transit Co., 234 F. 2d 253, 258 n. 6 (2d Cir. 1956). Had plaintiff Stalco sought to amend its complaint to allege citizenship in conformity with the facts in the pleadings, that amendment would certainly have been granted.

However, plaintiff here seeks to amend its statement of citizenship in such a way that the entire record is contradicted.

For over four years, plaintiff has consistently indicated that it maintains a place of business in New York. In both of the complaints in the actions before this Court, in the action in the Supreme Court of the State of New York, and, as recently as of March of this year, in a sworn affidavit by an employee of Stalco, plaintiff has represented that it is located in New York. Plaintiff's attorney now alleges that Stalco has not been in New York since 1971. (Plaintiff's amendment would still not cure the defect since it does not indicate whether New York was the principal place of business at the time of the filing of the complaint which is the determinative date.) As the Court stated in Walder v. Paramount Publix Corp., 135 F. Supp. 228, (S.D.N.Y. 1955), "... to allow this amendment, which flies in the face of prior positions and sworn statements of the individuals who now seek leave to amend, would not promote the interests of justice ...".

The concept of liberality of amendment is not an infinite one. See <u>Foman v. Davis</u>, 371 U.S. 178, 182 (1962). Despite the tendency toward liberality in the amendment process, the issue remains within the sound direction of the Court and denial of the opportunity for amendment may be warranted in the interest of justice. <u>Portsmouth Baseball Corp. v. Frick</u>, 21 F.R.D. 318 (S.D.N.Y. 1958) (Edelstein, J). The right to

amend to show grounds of jurisdiction may be waived by delay or other action. See 3 Moore, Federal Practice §15.09 (2d ed. 1968).

Plaintiff offers no excuse for the undue delay other than the ignorance of the attorney handling the case. This will not explain a four year delay during which time plaintiff had ample opportunity to discover and cure the defect. It is clearly within the discretion of this Court to deny leave to amend because of undue delay. Foman v. Davis, 371 U.S. 178, 182 (1962); Wheeler v. West India S.S. Co., 205 F. 2d 355 (2d Cir. 1953). In an action which had been pending for three years, the Court in Bernstein v. N.V. Nedalandsche-Amerikaansche Stoomvaart-Maatschappij, 79 F. Supp. 38 (S.D.N.Y. 1948), aff'd in part and modified in part on other grounds 173 F. 2d 71 (2d Cir. 1949), denied a motion to amend, stating:

While leave to amend should be freely given, the time must arrive at some stage of every litigation when plaintiff must be required to stand upon the allegations he is asserting; that time has arrived.

79 F. Supp., at 42

After four years of inexcusable delay, that time has certainly arrived in the case at bar.

Plaintiff Stalco obviously interposed this motion to amend as a safety valve. If it were determined that Stalco

Report of Magistrate Sol & Areiber and Recommendations

were an indispensable party and the Court thus lacked jurisdiction, this amendment would cure the diversity problems. However, in addition to the reasons already stated, this motion could not be granted because it is based solely on the affidavit of plaintiff's attorney. Since diversity jurisdiction would rest upon the factual issue of the citizenship of Stalco, further proof would certainly be required, particularly in light of the many contradictions in the pleadings. Bentinck v. Guaranty Trust Co. of New York, 109 F. Supp. 827 (S.D.N.Y. 1953).

Accordingly, it is recommended that the plaintiff's motion to amend the statement of citizenship in its complaint be denied.

# III MOTION TO AMEND THE COMPLAINT

The third motion is one by plaintiffs in both actions to amend their complaints to change the theory of their actions from breach of contract pursuant to a written agreement to a theory of "joint adventure". The Court need not decide this issue since it is recommended that both cases be dismissed.

Respectfully submitted,

SOL SCHREIBER

UNITED STATES MAGISTRATE

Dated: New York, N.Y.

September 9 , 1975

#### AFFIDAVIT OF DONALD B. ALLEN

property keeps

UNITED STATES DISTRIC	CT COURT		ij,	azanir uirca
SOUTHERN DISTRICT OF	NEW YORK			SEP 26 1975
		X		
MMI LTD. and INTERCAL KATZ Y ARSARAZ S.A.,	MBIO COMERCIAL	: 2	gu=#.	
	Plaintiffs.	.:	71	Civ. 3118 (MEL)
	riamonits,	:	11	CIV. SITO (MEL)
-against-		•		
PERACO CHARTERING CON	RPORATION,			
	Defendant	x		
,		X		
STALCO INTERNATIONAL	CORPORATION,	:		
	Plaintiff,	:.:		
-against-		:	72	Civ. 4926
FINANCIAL ENTENPRISE	경기 등에 가는 가장 가장 하는 것이 되었다.	•		APPTDAVIM
BAHAMAS LTD., HESNES and PER ARNSTEIN ARN		:		AFFICAVIT
	Defendants	:		
		x		
STATE OF NEW YORK	)			
	: 35.:			
COUNTY OF NEW YORK	)			

DONALD B. ALLEN, being duly sworn, deposes and says:

I am a member of the firm of CICHANOWICZ & CALLAN the attorneys for all the plaintiffs herein, and make this affidavit in opposition to Magistrate Schreiber's report and recommendation with respect to the various motions presently pending. A copy of Magistrate Schreiber's report is attached as Exhibit 1.

In summary, the complaint is that the plaintiffs and the defendants enterel into a joint venture to arrange the long

ants failed to perform their end of the deal, causing substantial losses to plaintiffs. The initial suit naming all parties (71 Civ. 3118) was filed on July 13, 1971. The following year it was believed (erroneously, as we will presently show) that Stalco's principal place of business was in New York City which, if true, would deny jurisdiction against Peraco, a New York corporation. No other diversity problems existed then or now.

by splitting it into two suits as above captioned, and consolidating them for all purposes. There was only token opposition from defense counsel (who represents all defendants) and this court approved the change. In the ensuing three years there were extensive depositions, discovery, etc., without any challenge to the jurisdiction. Opposing counsel apparently hoped to conceal his defenses until the last moment; he did not even file an answer to the 1972 complaints until February 1975. But when Magistrate Schreiber directed that the parties prepare a pretrial order, the lurking defenses surfaced and he directed that formal motions he made by both sides. There are now three motions before this Court:

- Defendants' motion to dismiss for failure to join an indispensable party;
- 2. Plaintiffs' notion to amend its allegation of citizenship for diversity purposes of plaintiff STALCO.

#### Affidavit of Donald B. Allen

3. Plaintiffs' motion to amend a single paragraph of each complaint in order to clarify it.

We take them up in the same order.

#### 1. Defendants' motion to Dismiss.

This motion is based on the allegation that Stalco is a New York resident; if not, the motion has no support since all parties are before the court in the combined suits. Magistrate Schreiber recommends dismissal for lack of jurisdiction, based on a belief that Stalco had its principal place of business in New York City on July 13, 1971, the date the complaint was filed.

This is contrary to fact. Annexed hereto as Exhibit 2, is the affidavit of Alan D. Jacobson, the Vice-President and General Counsel of Whittaker Corporation and the Vice-President of Whittaker's wholly-owned subsidiary, Stalco International Corporation. As can be seen therein, on July 13, 1971, the date that the original complaint was filed, Stalco was a division of Whittaker Corporation, a California Corporation. Thus, Stalco's citizenship for diversity purposes was on that date (and subsequent thereto) California—not New York—and the action as originally instituted was within the diversity jurisdiction of this Court. Therefore, Stalco can be a party to both suits.

It is regrettable that the annexed affidavit was not before the Magistrate when he submitted his report; it would have led to a different recommendation. We agree with him that jurisdiction is essential. We also agree that it is a fact

which must be proved at the trial, and one which can be contested. But we do not agree that such an important issue should be resolved on the basis of non-party affidavits, especially when those affidavits are now known to be wrong.

I accept some blame for this situation. I took over this case after joining the firm in mid-1973. When the jurisdictional issues were raised a few months ago, I initially relied on statements made and beliefs held by a former associate who was handling the case, and by a former employee of Stalco. But now that we know the truth, plaintiffs should be permitted to plead and prove it. Jurisdiction is based on facts, not affidavits, and plaintiffs should have their day in this Court which has always had jurisdiction.

# 2. Plaintiffs' Motion to Amend Allegations of Citizenship.

This is a metion to amend allegations of the citizenship of Stalco to conform to the truth. In view of the Jacobson affidavit (Ex. 2) and to avoid further unnecessary motions,
it should now be deemed a motion to amend the name of 'Stalco
International Corporation' to "Stalco International Company, a
division of Whittaker Corporation" with a principal office and
place of business in Los Angeles, California.

Magistrate Schreiber recommends against this motion because there exist erroneous affidavits to the contrary, and because of alleged undue delay. His recommendation is both harsh and arbitrary. It is unnecessarily harsh because the relief sought is not prejudicial to defendants and there is now pending

a motion by defendants in the Supreme Court action which, if granted, would leave this as the only forum. It is arbitrary because there is no mention of defendants' actions which were the real cause of delay.

When the first complaint was filed, a mistake was made in not determining that Stalco's principal place of business was in California. The mistake was compounded in 1972 when the motion was made to amend the complaint by dropping certain parties, starting a new action, and consolidating the two cases. However, defendants hardly put up token resistence to the motion, and after it was granted, engaged in extensive discovery procedures for three years thereafter. During those same three years (until February, 1975) defendants did not file an answer to either complaint which would have raised these issues. The jurisdictional issue was only raised recently—on the eve of trial—and has, within a few months, produced the controlling factual affidavit (Ex. 2).

Curiously, Magistrate Schreiber did not find that this three year delay on the part of defendants was "undue", or that it constituted a waiver of the objection. He simply maintained that the plaintiffs' response to this new point raised by the defendants, i.e., an attempt to correct a defect in pleading jurisdictional allegations, came too late. This despite the fact that 28 U.S.C. 1653 clearly states that such an amendment will even be allowed on appeal. A further discussion of this point is found in the accompanying brief.

# 3. Plaintiffs' Motion to Amend for Clarification.

This is a simple motion to amend paragraph 11 of 71 Civil 3118 and paragraph 12 of 72 Civil 4926 as shown on Exhibits 3 and 4 annexed hereto. We made this motion to avoid any later claim of surprise after defense counsel had the effrontery to claim that three years after examining all plaintiffs before trial, he had been misled into thinking that the entire suit was based on an April 25 letter regarding commissions.

Magistrate Schreiber presently regards this motion as moot, but indicated earlier that he would have recommended allowance of this simple, clarifying amendment.

#### Conclusion

In essence, Magistrate Schreiber and defense counsel would deprive plaintiffs of their day in court by denying jurisdiction where it truly exists, and by forbidling amendment to plead the truth simply because plaintiffs did not thoroughly investigate an issue before it was even raised. For our part, we seek only an opportunity to plead and prove all the essential facts in this case, without denying defendants the right to controvert or defend without limitation. Therefore, we respectfully submit that the proper disposition of the pending motions would be to:

Deny defendants' motion to dismiss, without prejudice to the right to renew the motion at time of trial.

Grant plaintiffs' motions to amend as indicated

Affidavit of Donald B. Allen

herein, without prejudice to defendants' right to plead any new defenses occasioned thereby.

Donald B. J. Chr.

Sworn to before me this

25th day of September, 1975.

WANDA A. AMDICE Narry Public, State of New York 10. 43:452:650 Outlined in Richard Dayon Commission Engine March 12, 1976

EXHIBIT 1--REPORT OF MAGISTRATE SCHREIBER ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

Identical to Report of Magistrate Sol Schreiber and Recommendations printed herein at pages Al37 to Al49.

# EXHIBIT 2--AFFIDAVIT OF ALAN D. JACOBSON ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

SOUTHERN	DISTRICT	OF NEW	YORK	
			ner Alle sags made grad more give this gave bride as	X
MMI LTD.	and INTER	RCAMBIO	COMERCIAL	KATZ :
Y ARSARA	Z S.A.,			:
			Plaintiffs	· :

UNITED STATES DISTRICT COURT

	-against-			:	71	Civ.	3118	(MEL
PERACO	CHARTERING	CORPORATION,		:				
		Defenda	int.	:				

STALCO INTERNATIONAL CORPORATION,

Plaintiff,

-against- 72 Civ. 4926
FINANCIAL ENTERPRISES OF THE BAHAMAS AFFIDAVIT

LTD., HESNES SHIPPING, A.S. and PER ARNSTEIN ARNEBERG,

Defendants. :

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES )

Alan D. Jacobson, being duly sworn deposes and says:

l. I am the Vice President and General Counsel of Whittaker Corporation ("Whittaker") and a Vice President of its wholly-owned subsidiary Stalco International Corporation ("Stalco"). I make this affidavit to explain the somewhat complicated corporate structure of Stalco so as to eliminate

Exhibit 2 Annexed to Affidavit of Donald B. Allen

any possible contention that diversity jurisdiction does not exist in this action.

- 2. Since its acquisition by Whittaker in 1967, Stalco has existed at varying times in one of three legal forms: (a) from 1967 through 1970, it was a Whittaker subsidiary incorporated in California with its principal place of business in New York; (b) from mid-1970 to mid-1971, it was a Whittaker division operating in New York; and (c) from mid-1971 to the present, it has been a California corporation conducting no active business whatever. In the balance of this affidavit I shall explain the matter more fully.
- 3. The first Stalco was a California corporation, incorporated on February 15, 1967 ("Stalco 1"). Stalco 1 had its principal place of business in New York City. On July 31, 1970 Stalco 1 was merged into its parent, Whittaker. (Whittaker is, and at all times has been, a California corporation with its principal offices in Los Angeles, California.)
- 4. From July 31, 1970 until August 10, 1971, what had been the Stalco 1 business ("the Stalco business") was not conducted through a corporate entity distinct from Whittaker. Rather the business was conducted by a division of Whittaker Corporation known as Stalco International Company, ("Stalco 2"). (I might note in passing that Stalco's transition from subsidiary to division status has

Exhibit 2 Annexed to Affidavit of Donald B. Aller

been obscured at times because Stalco 2 on occasion used leftover Stalco 1 stationery with the letterhead "Stalco International Corporation.") Stalco 2 had its offices in New York City at the same location as Stalco 1. Stalco 2 ceased operations on August 10, 1971.

- the Stalco business was conducted by a New York partnership known as Noblemet International Company ("Noblemet"). Noblemet which began to do business on August 10, 1971 was a partnership between Unico International Corporation (a company wholly unrelated to Whittaker) and a new Whittaker subsidiary incorporated in California on April 2, 1971 and known as "Stalco International Corporation" ("Stalco 3"). Stalco 3 (whose offices were with Whittaker's offices in Los Angeles, California) conducted no business whatever. It existed solely for the purpose of holding Whittaker's fifty percent interest in Noblemet.
- 6. Noblemet ceased to exist in mid-February, 1974 after which time no Whittaker subsidiary or division conducted, or had an interest in, the Stalco business. Stalco 3 survives today only as a corporate shell.
- 7. In sum, the Stalco which entered into the transactions giving rise to this action was Stalco 2, a division of a California corporation (Whittaker) with its principal offices in Los Angeles, California. Consequently, the name of the

# 160

Exhibit 2 Annexed to Affidavit of Donald B. Allen

plaintiff in this action should properly be "Stalco International Company, a division of Whittaker Corporation". However, if "Stalco International Corporation" is considered to be the proper plaintiff, the Stalco involved would have to be Stalco 3 (Stalco 1 having ceased to exist after its merger into Whittaker on July 31, 1970). In either event, the plaintiff would be a California corporation that, at all times, had its principal offices in Los Angeles, California.

Alan D. Jacobson

Sworn to before me this 17th day of September, 1975.

> OFFICIAL SEAL JANET A. MILLER STARY PUBLIC - CALIFORNIA

LOS ANGELES COUNTY

comm expires JUN 24, 1978

EXHIBIT 3--PROPOSED AMENDMENT TO COMPLAINT IN 71 CIVIL 3118
ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

Identical to Proposed Amendment to Complaint in 71 Civil 3118 annexed to Affidavit of Donald B. Allen printed herein at page A63.

EXHIBIT 4--PROPOSED AMENDMENT TO COMPLAINT IN 72 CIVIL 4926 ANNEXED TO AFFIDAVIT OF DONALD B. ALLEN

Identical to Proposed Amendment to Complaint in 72 Civil 4926 annexed to Affidavit of Donald B. Allen printed herein at page A64.

162 LETTER DATED OCTOBER 1, 1975 IN REPLY TO AFFIDAVIT OF DONALD B. ALLEN LAW OFFICES OF DONALD F. MOONEY IT BATTERY PLACE NEW YORK, N Y. 10004 (212) WH 3-1270 CABLE ADDRESS BOWSPRIT NEW YORK" October 1, 1975 Honorable Morris E. Lasker United States District Court U.S. Courthouse Poley Square New York, New York 10007 Re: Stalco International Corp. v. Pinancial Enterprises REC: of the Bahamas, et al., MMI Ltd. et al. v. Peraco Chartering Corp. CHANDINICA 71 Civ. 3118 Our File C-190 Dear Judge Lasker: We refer to Magistrate Schreiber's letter dated September 9, 1975, our letter to you dated September 12th and the letter from counsel for the plaintiffs in the abovecaptioned matters to you dated September 26, 1975, with enclosures (which we received Monday). The letter of Magistrate Schreiber dated September 9th submitting his report to you invited "comments." Plaintiffs' counsel has submitted affidavits and a memorandum, and we must reply to some of the matters asserted by plaintiffs' counsel. 1. At the outset, we must bring to the Court's attention that after Magistrate Schreiber told counsel on July 25, 1975, that he would recommend dismissal to you, plaintiffs' renewed prosecution of the suit initiated against these same defendant in 1972 in the New York Supreme Court, which is presently considering a motion addressed to plaintiffs' attempt to amend its complaint in that Court to plead a joint venture. Plaintiffs' counsel has erred in advising this Court at page 4 of his affidavit:

Letter Dated October 1, 1975 in Reply to Affidavit of Donald B. Allen

"there is now pending a motion by defendants in the Supreme Court action which, if granted, would leave this as the only forum."

The notion by the defendants in the Supreme Court is addressed to the attempt to amend the complaint in that Court, as can be seen by the Notice of Motion, copy of which is attached as Enclosure "A". Counsel argues to this Court that this amendment is a mere "clarification." In any event, if the motion is granted, obviously it would not leave the Federal Court "as the only forum" as represented by plaintiff's counsel in his affidavit.

- 2. We believe that the points raised in the affidavits, briefs and arguments already submitted deal squarely with most of the points reiterated by Mr. Allen's affidavit. Such submissions include the following:
  - a) Affic vit of Donald F. Mooney dated February 17, 1975 in opposition to motion for leave to amend with exhibits;
  - b) Defendants' memorandum in opposition to motion for leave to amend;
  - c) Notice of Cross Motion to Dismiss with Statement of Pacts, affidavit of Per Arneberg dated February 18, 1975 and exhibits;
  - d) Reply Affidavit of Per Arneberg dated March 19, 1975 in support of Cross Motion to Dismiss with exhibits;
  - e) Affidavit of Donald F. Hooney dated March 20, 1975 reviewing motions before the court;
  - f) Defendants Memorandum in Support of Cross Motion;
  - g) Defendants' Reply Memorandum in Support of Cross Motion to Dismiss;
  - h) Donald F. Mooney letter of March 24, 1975 to Judge Lasker;
  - i) Donald F. Mooney letter of April 14, 1975, to Magistrate Schreiber;

Letter Dated October 1, 1975 in Reply to Affidavit of Donald B. Allen

Honorable Morris E. Lasker -3-

October 1, 1975

- j) Donald F. Mooney letter of April 17, 1975, to Magistrate Schreiber;
- k) Donald F. Mooney letter of May 28, 1975, to Magistrate Schreiber;
- 1) Donald F. Mooney letter of July 30, 1975, to Magistrate Schreiber;
- m) Donald F. Mooney letter of August 1, 1975, to Magistrate Schreiber;
- n) Donald P. Mooney letter of August 4, 1975, to Hagistrate Schreiber;
- 0) Donald P. Mooney letter of August 22, 1975 to Magistrate Schreiber;
- p) Donald P. Mooney letter of August 25, 1975 to Magistrate Schreiber.

However, we must also direct your attention to the transcripts of the oral arguments before Magistrate Schreiber on May 15, 1975 and of the hearing held on July 25, 1975.

- that the complaint alleges a "joint venture." A review of plaintiff's several complaints does not support this statement. Plaintiffs' claims are based on simple contract set forth in a written agreement dated April 25, 1971. Defendants pointed out that their entire discovery was addressed to this written agreement, and did not cover the elements of a cause of action based on a joint venture. In fact, at page 65 of the transcript of the hearing held on May 15, 1975, Magistrate Schreiber ordered plaintiffs to specifically show how each of the four elements of a cause of action for a joint venture were covered in the examinations conducted by defendants. The response of plaintiffs' counsel, we submit, demonstrated that a written agreement, rather than a "joint venture" was the focus of discovery.
- 4. In the first full paragraph on page 2, Mr. Allen points out that defendants answer was not served until February, 1975. While true, the service was not untimely because plaintiffs had not served an order approving the amendment to the complaint sought by plaintiff on motion in November, 1972, and Magistrate Schreiber indicated he would not accept Mr. Allen's claim that he could serve an amended complaint as a matter of right.

165 Letter Dated October 1, 1975 in Reply to Affidavit of Donald B. Allen October 1, 1975 Honorable Horris E. Lasker -4-5. The irony is that this was plaintiffs' motion seeking to cure the jurisdictional defect created by Stalco's citizenship, which Mr. Allen now argues not to have been necessary because Stalco was a "California subsidiary/division." But this Court's view of Stalco's citizenship did not originate in a vacuum. It was alleged in all of the complaints and amended complaints that Stalco had a place of business in New York City. The affidavit of Mr. McMamara, plaintiffs' former counsel, dated November 20, 1972 affirms that Stalco had its principal place of business in New York City. Surely, this was no fleeting apparition otherwise Mr. McNamara would not have moved to amend his complaint, drop parties and consolidate. In an affidavit dated May 7, 1975, Er. Allen himself stated that "at that time (July 13, 1971) Stalco was doing business in New York City .... In an affidavit evern to on an unspecified day in March, 1975, Mr. Goldberg, a representative of Stalco, stated that Stalco was located in New York. Magistrate Schreiber's conclusion is clearly not drawn from disputed testimony or affidavits. The plaintiffs' side of the record is replete with proof. One final point should be made. On August 3, 1972, Stalco invoked the venue and jurisdiction of the New York State Supreme Court and represented to that Court in a verified petition (in an unrelated matter) that its principal place of business is in New York as follows: Fetitioner is a corporation organized and existing under the laws of the State of California, with principal offices at 919 Third Avenue, New York, New York. In the Notice of Petition, Petitioner Stalco designated: New York County as place of trial. The basis of venue is petitioner's office at 919 Third Avenue, New York, New York. Dated June 29, 1972. Copies of these pleadings are annexed hereto as Enclosure B. The principal place of business is a factor determinative of citizenship for diversity purposes (28 U.S.C.A. \$1332(c), See generally, Law of Federal Courts, 2d Ed. Wright, C.A., St. Paul 1970, 527). Judge Tyler of this Court discussed the effect of

this statutory language in Inland Rubber Corp. v. Triple a Tire Services, Inc., 220 P. Supp. 490, at 496 (1963);

> Thus, if any one state contains a substantial predominance of corporate operations, including perschnel, as compared with any other single state, then in that state lies the "principal place of business of the corporation within the meaning of 28 U.S.C. § 1332(c).

> This holds true even though, as is at least arguably the situation in the case at bar, the locus of over-all direction and control lies in another state.

It is by the application of these principles to the facts at bar that I find there is a substantial predominance of the business operations of Inland in New York State, and that, accordingly, its principal place of business, within the meaning of Section 1332(c), is located in New York.

Indeed, paragraph 5 of Mr. Jacobson's affidavit concludes that no Stalco existed in 1972, despite its litigiousness in this State and District during that year.

It is not enough for Mr. Allen to dismiss all previous affidavits on the subject as being "erroneous." Not only the defendants but the Court relied on these statements. Mr. Jacobson's chronicle of Stalco does not deny that Stalco was de facto conducting business in New York and had its principal offices here. Indeed, he admits "Stalco 2 had its offices in New York at the same location as Stalco 1, This admission of continuity indicates that Stalco existed in New York, did business in New York, held itself out as such and, apparently, had no other place of business. Since Whittaker is not a party, its citizenship is not relevant. In summary, Mr. Allen is attempting to create an issue ex nihil.

We would note in passing that this continuing debate over the citizenship of this ubiquitous plaintiff has resulted in considerable legal expense for defendants who, for their part, have merely relied on plaintiffs' affidavits.

Δ 167 Letter Dated October 1, 1975 in Reply to Affidavit of Donald B. Allen October 1, 1975 Honorable Morris E. Lasker -6-6. Since plaintiff is admittedly prosecuting the action in the New York State Court, where the Court is prosently considering only the narrow question as to whether plaintiffs are entitled to "a simple, clarifying amendment," the plaintiff is not in the least bit prejudiced by any procedural determinations by this Court. 7. At the top of Page 5, Mr. Allen alleges that we were misled by plaintiffs' pleadings. The onus for this falls squarely on the shoulders of plaintiffs who drafted the conplaint(s). Defendants, after all, have a right to know what they are being sued for, when the plaintiffs seek recovery of many hundreds of thousands of dollars. Pinally, the anguish which defendants have been subjected to through this multiple litigation based on arcrahous grounds of recovery is fully demonstrated by Mr. Jacobson in paragraph 7 of his affidavit. He states: However, if "Stalco International Corporation" is considered to be the proper plaintiff, the Stalco involved would have to be Stalco 3 .... We submit that if plaintiff and its able counsel are not able to identify the proper plaintiffs, the resources of this Court and defendants should not be exploited to enable plaintiffs to ascertain who they, themselves, are. Very truly yours, Donald P. Mooney DFM: lm

MEMORANDUM OF LASKER, D.J., ENDORSED

#### ENDORSEMENT

STALCO INTERNATIONAL CORP., Plaintiff, v. FINANCIAL ENTERPRISES OF THE BAHAMAS, Defendant. 72 Civ. 4926

N.M.I. LTD & INTERCAMBIO COMMERCIAL KATZ Y ARSARAZ, Plaintiff, v. PERACO CHARTERING CORP., Defendant. 71 Civ. 3118

LASKER, D.J.

The motion to dismiss for failure to join an indispensable party is granted; the motion of Stalco to amend the statement of citizenship in its complaint is denied and the motion by plaintiffs in both actions to amend their complaints to change the theory of their actions from breach of contract to a theory of "joint adventure" is denied as mooted by granting of the motion to dismiss.

The complicated factual background of these cases in which plaintiff Stalco has over a period of years shifted its factual claim as to whether it was or was not at the time the action was brought a citizen of New York is set forth with impressive clarity and detail in the report and recommendation of Honorable Sol Schreiber dated September 9, 1975.

Since the submission of that report the court has reviewed the voluminous file and has considered the affidavit of Donald B. Allen, counsel for the plaintiffs, filed September 26, 1975, in opposition to Magistrate Schreiber's report, and letter of Donald F. Mooney, dated October 1, 1975 in reply thereto. We agree with the carefully reasoned conclusions and recommendations of the Magistrate as set forth in his report. Nothing contained in the affidavit of plaintiffs' counsel in opposition to the report persuades us that the recommendations are inappropriate. We agree with the comments of defendants' counsel that amendment of plaintiffs' papers at this very late date to establish that all along it has been a citizen of California although the litigation to date has been based on its claim that it was a citizen of New York, would not be in the interest of justice and that, as defense counsel states, "If plaintiff and its able counsel are not able to identify the proper plaintiffs, the resources of this court and defendants should not be exploited to enable plaintiffs to ascertain who they, themselves, are. "

Memorandum of Lasker, D.J., Endorsed

These observations are particularly apt in light of the fact that as long ago as August, 1972 plaintiffs filed a suit against all defendants in the New York State Supreme Court which is still pending. Accordingly, they will not be prejudiced by the dismissal of their claims here.

The motion to dismiss is granted, the motion to amend the complaint is denied for the reasons set forth above.

It is so ordered.

Dated: New York, New York January 30, 1976.

MORRIS E. LASALER



bus and timely service of ONE copies of the within APPENDIA is hereby admitted this 147 Hday of APRIL 1976

Attorney for A PPECLEES

